

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 -----)
5 IN RE: NATIONAL) MDL No. 2804
6 PRESCRIPTION OPIATE)
7 LITIGATION) Case No.
8 -----) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES TO) Hon. Dan A. Polster
11 ALL CASES)
12 -----)

13 HIGHLY CONFIDENTIAL
14 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
15 VIDEOTAPED 30(b)(6) DEPOSITION
16 OF
17 WALGREENS BOOTS ALLIANCE, INC. a/k/a WALGREEN CO.
18 BY
19 EDWARD BRATTON

20 December 16, 2018
21 Chicago, Illinois

22 GOLKOW LITIGATION SERVICES
23 877.370.3377 ph | 917.591.5672 fax
24 deps@golkow.com

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<p>1 The videotaped 30(b)(6) deposition of</p> <p>2 EDWARD BRATTON, called by the Plaintiffs for</p> <p>3 examination, taken pursuant to the Federal Rules of</p> <p>4 Civil Procedure of the United States District</p> <p>5 Courts pertaining to the taking of depositions,</p> <p>6 taken before CORINNE T. MARUT, C.S.R. No. 84-1968,</p> <p>7 Registered Professional Reporter and a Certified</p> <p>8 Shorthand Reporter of the State of Illinois, at the</p> <p>9 offices of Bartlit Beck Herman Palenchar & Scott,</p> <p>10 Suite 700, 54 West Hubbard Street, Chicago,</p> <p>11 Illinois, on December 16, 2018, commencing at 9:03</p> <p>12 a.m.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 APPEARANCES (Continued):</p> <p>2 NAPOLI SHKOLNIK, PLLC</p> <p>3 360 Lexington Avenue, 11th Floor</p> <p>4 New York, New York 10017</p> <p>5 212-397-1000</p> <p>6 BY: HUNTER J. SHKOLNIK, ESQ.</p> <p>7 hunter@napolilaw.com</p> <p>8 (via telephonic communication)</p> <p>9 ON BEHALF OF WALGREENS BOOTS ALLIANCE, INC.</p> <p>10 aka WALGREEN CO.:</p> <p>11 BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP</p> <p>12 54 West Hubbard Street, Suite 300</p> <p>13 Chicago, Illinois 60654</p> <p>14 312-494-4475</p> <p>15 BY: PETER B. BENSINGER, JR., ESQ.</p> <p>16 Peter.Bensinger@BartlitBeck.com</p> <p>17 KATHERINE M. SWIFT, ESQ.</p> <p>18 kswift@bartlit-beck.com</p> <p>19 ON BEHALF OF ENDO HEALTH SOLUTIONS INC. and</p> <p>20 ENDO PHARMACEUTICALS, INC.,</p> <p>21 PAR PHARMACEUTICAL, INC., and PAR PHARMACEUTICAL</p> <p>22 COMPANIES, INC. (f/k/a Par Pharmaceutical</p> <p>23 Holdings, Inc.):</p> <p>24 BAKER & HOSTETLER LLP</p> <p>Key Tower - Suite 2000</p> <p>127 Public Square</p> <p>Cleveland, Ohio 44114-1214</p> <p>216-621-0200</p> <p>BY: MELISSA D. BERTKE, ESQ.</p> <p>mbertke@bakerlaw.com</p> <p>(via telephone/livestream)</p>
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<p>1 APPEARANCES:</p> <p>2 DAVID R. COHEN, ESQ.</p> <p>3 SPECIAL MASTER</p> <p>4 24400 Chagrin Boulevard, Suite 300</p> <p>5 Cleveland, Ohio 44122</p> <p>6 216-831-0001</p> <p>7 David@SpecialMaster.Law</p> <p>8 ON BEHALF OF THE PLAINTIFFS:</p> <p>9 LEVIN PAPANTONIO THOMAS MITCHELL</p> <p>10 RAFFERTY & PROCTOR P.A.</p> <p>11 316 South Baylen Street, Suite 600</p> <p>12 Pensacola, Florida 32502</p> <p>13 205-396-3982</p> <p>14 BY: PETER J. MOUGEY, ESQ.</p> <p>15 pmougey@levinlaw.com</p> <p>16 PAGE A. POERSCHKE, ESQ.</p> <p>17 ppoerschke@levinlaw.com</p> <p>18 WILLIAM BAKER, ESQ.</p> <p>19 WCB850@gmail.com</p> <p>20 (via livestream)</p> <p>21 LAURA DUNNING, ESQ.</p> <p>22 ldunning@levinlaw.com</p> <p>23 (via livestream)</p> <p>24 JEFF GADDY, ESQ.</p> <p>25 jgaddy@levinlaw.com</p> <p>26 (via livestream)</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> 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<p>824</p> <p>825</p> <p>826</p> <p>827</p> <p>828</p> <p>829</p> <p>830</p> <p>831</p> <p>832</p> <p>833</p> <p>834</p> <p>835</p> <p>836</p> <p>837</p> <p>838</p> <p>839</p> <p>840</p> <p>841</p> <p>842</p> <p>843</p> <p>844</p> <p>845</p> <p>846</p> <p>847</p> <p>848</p> <p>849</p> <p>850</p> <p>851</p> <p>852</p> <p>853</p> <p>854</p> <p>855</p> <p>856</p> <p>857</p> <p>858</p> <p>859</p> <p>860</p> <p>861</p> <p>862</p> <p>863</p> <p>864</p> <p>865</p> <p>866</p> <p>867</p> <p>868</p> <p>869</p> <p>870</p> <p>871</p> <p>872</p> <p>873</p> <p>874</p> <p>875</p> <p>876</p> <p>877</p> <p>878</p> <p>879</p> <p>880</p> <p>881</p> <p>882</p> <p>883</p> <p>884</p> <p>885</p> <p>886</p> <p>887</p> <p>888</p> <p>889</p> <p>890</p> <p>891</p> <p>892</p> <p>893</p> <p>894</p> <p>895</p> <p>896</p> <p>897</p> <p>898</p> <p>899</p> <p>900</p> <p>901</p> <p>902</p> <p>903</p> <p>904</p> <p>905</p> <p>906</p> <p>907</p> <p>908</p> <p>909</p> <p>910</p> <p>911</p> <p>912</p> <p>913</p> <p>914</p> 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 8 VIDEOTAPED BY: BEN STANSON
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 11 REPORTED BY: CORINNE T. MARUT, C.S.R. No. 84-1968
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<p>1 THE VIDEOGRAPHER: We are now on the record.</p> <p>2 My name is Ben Stanson. I'm a videographer for</p> <p>3 Golkow Litigation Services.</p> <p>4 Today's date is December 16, 2018, and</p> <p>5 the time is 9:03 a.m.</p> <p>6 This video deposition is being held in</p> <p>7 Chicago, Illinois in the matter of National</p> <p>8 Prescription Opiate Litigation, pending in the U.S.</p> <p>9 District Court, Northern District of Ohio, Eastern</p> <p>10 Division.</p> <p>11 The deponent is Edward Bratton.</p> <p>12 Counsel will be noted on the</p> <p>13 stenographic record.</p> <p>14 The Court Reporter is Corinne Marut.</p> <p>15 Will you please swear in the witness.</p> <p>16 (WHEREUPON, the witness was duly</p> <p>17 sworn.)</p> <p>18 EDWARD BRATTON,</p> <p>19 called as a witness herein, having been first duly</p> <p>20 sworn, was examined and testified as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. Good morning, Mr. Bratton. My name is</p> <p>24 Peter Mougey. I represent the Plaintiffs in this</p>	<p>1 MS. FLOWERS: Jodi Flowers, Motley Rice, on</p> <p>2 behalf of the Plaintiffs.</p> <p>3 MR. MOUGEY: Okay.</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. And, sir, as part of your obligations</p> <p>6 today as the corporate representative for</p> <p>7 Walgreens, you have an obligation to be prepared</p> <p>8 for the topics that you've been designated for,</p> <p>9 correct, sir?</p> <p>10 A. Correct.</p> <p>11 Q. And I'm going to hand you, Mr. Bratton,</p> <p>12 a series of four exhibits, which are just some</p> <p>13 housekeeping issues, and we're going to identify</p> <p>14 this document as Bratton 30(b)(6) 1.</p> <p>15 And I made five copies so Special Master</p> <p>16 Cohen can have one as well.</p> <p>17 (WHEREUPON, a certain document was</p> <p>18 marked as Bratton 30(b)(6) Exhibit</p> <p>19 No. 1: Plaintiffs' Amended Notice</p> <p>20 of Oral Videotaped 30(b)(6)</p> <p>21 Deposition of Edward Bratton.)</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. Let's just start with a couple of these</p> <p>24 housekeeping documents, if you would.</p>

<p style="text-align: right;">Page 14</p> <p>1 So, we're looking at Bratton 30(b)(6)</p> <p>2 Exhibit 1 and you see your name in the right-hand</p> <p>3 corner on the first page, Edward Bratton, that's</p> <p>4 been designated as the 30(b)(6) representative,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you see below that Mr. Bratton will</p> <p>8 be deposed as topics covering 1(a) through (n),</p> <p>9 which we'll go through, of the first 30(b)(6)</p> <p>10 notice filed June 15, 2018 and topics 6 through 8</p> <p>11 and 17 through 22 of the second 30(b)(6) notice</p> <p>12 filed on June 15, 2018, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Have you seen this Amended Notice of</p> <p>15 Videotaped Deposition before today?</p> <p>16 A. I don't know if I saw this exact</p> <p>17 version, but it looks familiar.</p> <p>18 Q. Okay. And, sir, you understand that</p> <p>19 your testimony today could be used as Walgreens'</p> <p>20 positions or opinions on certain matters for the</p> <p>21 trial of this matter, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you understand that the testimony</p> <p>24 that you give today is being videotaped and could</p>	<p style="text-align: right;">Page 16</p> <p>1 III, "Subject Matters for Testimony," (a) through</p> <p>2 (n) as in no.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And, sir, have you had an opportunity to</p> <p>6 review Bratton 30(b)(6) Exhibit 2 before today?</p> <p>7 A. I believe, yes.</p> <p>8 Q. And if you turn to -- to page 2 of that</p> <p>9 document, it says, "Duty to Prepare."</p> <p>10 A. Yes.</p> <p>11 Q. And the "Duty to Prepare," the paragraph</p> <p>12 below that, "The testimony elicited in the</p> <p>13 deposition represents Walgreens' knowledge, not the</p> <p>14 individual deponent's knowledge."</p> <p>15 Does that make sense to you, sir? As</p> <p>16 opposed to your testimony two weeks ago, that was</p> <p>17 your personal knowledge, today you are here on</p> <p>18 behalf of Walgreens, correct?</p> <p>19 MR. BENSINGER: Objection to form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Correct.</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. You are here today to provide testimony</p> <p>24 that is Walgreens' position on certain matters,</p>
<p style="text-align: right;">Page 15</p> <p>1 be used in a trial for a jury to render an ultimate</p> <p>2 decision in this case, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Let me hand you what I'm going to mark</p> <p>5 as Bratton 30(b)(6) 2.</p> <p>6 (WHEREUPON, a certain document was</p> <p>7 marked as Bratton 30(b)(6) Exhibit</p> <p>8 No. 2: First Notice of Deposition</p> <p>9 Pursuant to Rule 30(b)(6) and</p> <p>10 Document Request Pursuant to Rule</p> <p>11 30(b)(2) and Rule 34 to Defendant</p> <p>12 Walgreens.)</p> <p>13 BY MR. MOUGEY:</p> <p>14 Q. This is titled "First Notice of</p> <p>15 Deposition Pursuant to Rule 30(b)(6) and Document</p> <p>16 Request Pursuant to Rule 30(b)(2) and Rule 34 to</p> <p>17 Defendant Walgreens Boots Alliance."</p> <p>18 Do you follow me, sir?</p> <p>19 A. Yes.</p> <p>20 Q. If you would, sir, the topics that you</p> <p>21 have been designated to depose -- to provide</p> <p>22 testimony on today on behalf of Walgreens is on</p> <p>23 page 6 of that document, and specifically on page 6</p> <p>24 and continuing into page 7, the topics listed under</p>	<p style="text-align: right;">Page 17</p> <p>1 correct?</p> <p>2 MR. BENSINGER: Objection to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I'm -- I understand I'm here to provide</p> <p>5 the corporate knowledge on these topics.</p> <p>6 BY MR. MOUGEY:</p> <p>7 Q. And the second sentence, "Walgreens must</p> <p>8 conduct a thorough investigation in response to the</p> <p>9 Deposition Notice and must prepare a witness to</p> <p>10 testify to all matters 'known or reasonably</p> <p>11 available to the organization.'"</p> <p>12 Did I read that correctly, sir?</p> <p>13 A. Yes.</p> <p>14 Q. And, sir, do you believe you've</p> <p>15 fulfilled your obligation to prepare today on the</p> <p>16 topics designated (a) through (n) on Bratton</p> <p>17 30(b)(6) 2?</p> <p>18 A. I believe so.</p> <p>19 Q. Now, let's go back to page 6 of this</p> <p>20 document, (a) through (n).</p> <p>21 Let's just start with (a), "Your</p> <p>22 past/present suspicious orders monitoring system,</p> <p>23 SOMS program, policies and procedures."</p> <p>24 Do you see that, sir?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. I do.</p> <p>2 Q. I won't read these one by one. And</p> <p>3 you've read these before, correct, sir?</p> <p>4 A. Correct.</p> <p>5 Q. And you understand that the first</p> <p>6 several of these all are related to Walgreens'</p> <p>7 suspicious order monitoring policies and</p> <p>8 procedures, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you understand, for example, in (b),</p> <p>11 the "Know Your Customer" program policies and</p> <p>12 procedures pertains to suspicious order monitoring</p> <p>13 policies and procedures of Walgreens, correct?</p> <p>14 A. Correct.</p> <p>15 Q. I'm going to hand you what I've marked</p> <p>16 as Bratton 30(b)(6) 3.</p> <p>17 (WHEREUPON, a certain document was</p> <p>18 marked as Bratton 30(b)(6) Exhibit</p> <p>19 No. 3: Second Notice of</p> <p>20 Deposition.)</p> <p>21 BY MR. MOUGEY:</p> <p>22 Q. Which is the Second Notice of Deposition</p> <p>23 pursuant to Rule 30(b)(6), which has some</p> <p>24 additional topics identified beginning on page 7.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And, 8, "Your interaction with the</p> <p>2 DEA/FDA related to the scheduling of controlled</p> <p>3 substances and setting of quotas."</p> <p>4 Correct, sir?</p> <p>5 A. Correct.</p> <p>6 Q. And then if you turn to page 9, I won't</p> <p>7 read through each one of those, but 17 through 22</p> <p>8 are additional topics you have been designated to</p> <p>9 testify on today, correct, sir?</p> <p>10 A. Correct.</p> <p>11 Q. Do you see any of these that we have</p> <p>12 just been through, the topics that you've been</p> <p>13 designated on, that you believe you are not here to</p> <p>14 testify on or that you haven't been prepared for?</p> <p>15 MR. BENSINGER: Objection to form.</p> <p>16 BY MR. MOUGEY:</p> <p>17 Q. You can take your time and read through</p> <p>18 them.</p> <p>19 A. I believe that these are all the ones</p> <p>20 I've prepared for, yes.</p> <p>21 Q. Sir, you've been an employee of</p> <p>22 Walgreens since 2006, correct, sir?</p> <p>23 A. I believe November 2006.</p> <p>24 Q. I'm sorry. I am having a little bit of</p>
<p style="text-align: right;">Page 19</p> <p>1 Sir, have you seen -- have you seen this</p> <p>2 document before?</p> <p>3 A. I believe I have.</p> <p>4 Q. All right. And if you would, sir,</p> <p>5 please turn to page 7 of Bratton 30(b)(6) 3.</p> <p>6 A. Okay.</p> <p>7 Q. And on page 7, 6, 7 and 8, you've been</p> <p>8 designated to provide testimony on behalf of</p> <p>9 Walgreens.</p> <p>10 Do you see "Your efforts to conduct</p> <p>11 audits and/or investigations relating to your</p> <p>12 suspicious order monitoring system to review past</p> <p>13 practices and to ensure compliance with your legal</p> <p>14 responsibilities"?</p> <p>15 Correct, sir?</p> <p>16 A. Correct.</p> <p>17 MR. BENSINGER: Objection; compound.</p> <p>18 BY MR. MOUGEY:</p> <p>19 Q. "Your interactions with the DEA</p> <p>20 regarding distribution of controlled substances</p> <p>21 including compliance, regulatory and administrative</p> <p>22 actions, communications and penalties."</p> <p>23 Do you see that, sir?</p> <p>24 A. I do.</p>	<p style="text-align: right;">Page 21</p> <p>1 trouble hearing you.</p> <p>2 November of 2006 is when you began your</p> <p>3 tenure at Walgreens?</p> <p>4 A. Yes.</p> <p>5 Q. And you've filled different capacities</p> <p>6 at Walgreens, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And from 2006 until 2013, the beginning</p> <p>9 of 2013, none of your roles had anything to do with</p> <p>10 suspicious order monitoring policies or procedures,</p> <p>11 correct, sir?</p> <p>12 A. Correct.</p> <p>13 Q. And until the beginning of February,</p> <p>14 January, '13, your role had nothing to do with the</p> <p>15 DEA and controlling Schedule II through V opiates,</p> <p>16 correct, sir?</p> <p>17 A. Correct.</p> <p>18 Q. Only beginning in early '13 did your</p> <p>19 role change into Pharmaceutical Integrity whose job</p> <p>20 it was to monitor suspicious orders of controlled</p> <p>21 substances, correct, sir?</p> <p>22 A. Correct.</p> <p>23 Q. So, in preparation for your testimony</p> <p>24 today, sir, is it fair to say that you don't have</p>

<p style="text-align: right;">Page 22</p> <p>1 any personal knowledge of Walgreens' policies and 2 procedures regarding suspicious order monitoring 3 programs, policies and procedures prior to late 4 2012? 5 A. Correct. 6 Q. So, in preparation for today, you had to 7 kind of go back and familiarize yourself, with the 8 help of others, about Walgreens' suspicious order 9 monitoring system, their program, policies and 10 procedures, correct, sir? 11 A. Correct. 12 Q. And in order to do that -- 13 MR. MOUGEY: Who else just chimed in? 14 MR. BARNES: This is Robert Barnes in 15 Pittsburgh for HBC. 16 MR. MOUGEY: Thank you, Robert. 17 BY MR. MOUGEY: 18 Q. In order to do that, sir, you had to 19 review a number of documents, including policies, 20 procedures, manuals at Walgreens, correct? 21 A. That was part of my preparation, yes. 22 Q. Now, when I say "a manual," kind of back 23 in the old days we'd have manuals and they'd be on 24 your desk maybe in a binder and that would contain</p>	<p style="text-align: right;">Page 24</p> <p>1 that have detailed the past procedures or 2 processes. 3 BY MR. MOUGEY: 4 Q. And I understand that there is design 5 documents and documents that -- that changed over 6 time. What I'm looking for, though, is, is there a 7 suspicious -- a specific manual that you use today 8 that kind of captures Walgreens' suspicious order 9 monitoring policy and procedures? 10 A. Internal to my team, we have some job 11 aids and procedure documents that I think would 12 parallel what you're describing. 13 Q. So, Walgreens approximately has, give or 14 take on the time, about 250,000 employees, right? 15 A. Correct. 16 Q. There are, depending on the time, 17 anywhere from 4,500 to 7 or 8,000 stores across the 18 U.S., correct? 19 A. Approximately. 20 Q. And if the firm designates manuals that 21 are available to the employees of Walgreens on 22 various issues, correct? 23 A. Correct. 24 Q. And it's important that all of the</p>
<p style="text-align: right;">Page 23</p> <p>1 all of the company's practices and procedures and 2 it would be an easy reference point. Does that 3 make sense? 4 A. Yes. 5 Q. And I think as we have evolved with 6 technology, a lot of times those policies and 7 procedure manuals are on a firm intranet. You're 8 familiar with the term "firm intranet"? 9 A. Yes. 10 Q. Meaning that the employees of a 11 particular company can go on the firm intranet and 12 look at the policies and procedures as a point of 13 reference, correct? 14 A. Correct. 15 Q. And Walgreens has a manual on suspicious 16 order monitoring policies and procedures that 17 covers what the criteria and the thresholds are for 18 suspicious order monitoring policies, right? 19 MR. BENSINGER: Objection; vague, compound. 20 You can answer. 21 BY THE WITNESS: 22 A. We have a -- documents that exist today 23 on how we monitor suspicious order monitoring, and 24 we have various design documents and other things</p>	<p style="text-align: right;">Page 25</p> <p>1 employees, starting from pharmacy employees and lab 2 technicians up to pharmacists and all the way up to 3 corporate, have a central place for policies and 4 procedures that everyone can go to reference for 5 any specific topic, right? 6 MR. BENSINGER: Objection; beyond the scope. 7 BY THE WITNESS: 8 A. I don't know. I mean, not every manual 9 is useful to every employee. So I'm not sure. 10 BY MR. MOUGEY: 11 Q. So you're not sure. So, in preparation 12 for today and the topics that we just went through, 13 for example, (a), "Your past/present suspicious 14 orders monitoring system, SOMS program, policies 15 and procedure," was there a manual that you were 16 able to reference that tracked the policies and 17 procedures over time to fulfill Walgreens' 18 responsibilities under the Controlled Substance 19 Act? 20 A. There was no single document that 21 contained all of those memorializing them 22 throughout time, no. 23 Q. No single document? 24 A. Correct.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. No manual, right?</p> <p>2 A. Correct.</p> <p>3 Q. So, if anyone had any responsibility for</p> <p>4 monitoring controlled substance orders, there was</p> <p>5 no place to go at any point in time and look and</p> <p>6 see what the specific policy or procedure was,</p> <p>7 correct?</p> <p>8 MR. BENSINGER: Objection; mischaracterization.</p> <p>9 BY THE WITNESS:</p> <p>10 A. At different times there would have been</p> <p>11 different documents or places they would have to</p> <p>12 look. There is not a single document that contains</p> <p>13 all those throughout the scope of the last 10, 12</p> <p>14 years, no.</p> <p>15 BY MR. MOUGEY:</p> <p>16 Q. Now, I hand you what we're going to mark</p> <p>17 as Bratton 30(b)(6) 5 --</p> <p>18 THE REPORTER: That should be 4.</p> <p>19 MR. MOUGEY: 4. Thank you.</p> <p>20 (WHEREUPON, a certain document was</p> <p>21 marked as Bratton 30(b)(6) Exhibit</p> <p>22 No. 4: Defendants Walgreen Co. and</p> <p>23 Walgreen Eastern Co.'s Responses to</p> <p>24 Plaintiffs' '(First) Combined</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. "For each suspicious order you reported</p> <p>2 to the DEA since January 2006, please identify</p> <p>3 whether you declined the order or shipped the order</p> <p>4 and produce all documents related thereto; please</p> <p>5 identify the Bates stamp range for each case</p> <p>6 related to Case Track One."</p> <p>7 Do you see that, sir?</p> <p>8 A. I do.</p> <p>9 Q. And do you see under the response</p> <p>10 Walgreens incorporates by reference its response</p> <p>11 to -- I'm sorry -- yes, response to Request No. 2.</p> <p>12 Do you see that?</p> <p>13 A. Um-hmm.</p> <p>14 Q. And request 2 is the one that we just</p> <p>15 went through with the series of Bates ranges,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. It says, if you look below, under</p> <p>19 request 7 on the bottom of page 9, "For each</p> <p>20 suspicious order you reported and then shipped</p> <p>21 since January 1, 2006, please produce all documents</p> <p>22 related to your due diligence for each; please</p> <p>23 identify the Bates stamp range for each related to</p> <p>24 Case Track One."</p>
<p style="text-align: right;">Page 27</p> <p>1 Discovery Requests."")</p> <p>2 BY MR. MOUGEY:</p> <p>3 Q. And this document is titled "Defendant</p> <p>4 Walgreens Company and Walgreen Eastern Co.'s</p> <p>5 Responses to Plaintiff's First Combined Discovery</p> <p>6 Requests."</p> <p>7 Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. And if you would, sir, turn to page 6.</p> <p>10 "Please produce each of your suspicious order</p> <p>11 monitoring system (SOMS) policies and procedures</p> <p>12 since January 1, 2006 and identify the Bates stamp</p> <p>13 range for each; please identify the effective dates</p> <p>14 each was in force and effect."</p> <p>15 Do you see that, sir?</p> <p>16 A. I do.</p> <p>17 Q. And you see below on the bottom of</p> <p>18 page 6 and beginning to the top of page 7 that</p> <p>19 there are a series of what appear to be Bates</p> <p>20 ranges, correct, sir?</p> <p>21 A. Correct.</p> <p>22 Q. Now, if you would, also, turn to</p> <p>23 request 6 on page 9.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 29</p> <p>1 Do you see that, sir?</p> <p>2 A. I do.</p> <p>3 Q. And then if you look down in the</p> <p>4 response, Walgreens references its response to</p> <p>5 Request No. 6, right?</p> <p>6 A. Yes.</p> <p>7 Q. You need to do a little mental</p> <p>8 gymnastics here, but request 7 and request 6 all</p> <p>9 respond back to request 2 in the Bates numbers in</p> <p>10 request 2, right?</p> <p>11 A. That appears to be the case.</p> <p>12 Q. All right. So, in preparation for your</p> <p>13 testimony today, I've been handed approximately two</p> <p>14 boxes of notebooks this morning.</p> <p>15 Have you been -- you've been reviewing</p> <p>16 documents in preparation for your -- for your</p> <p>17 testimony today, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you have an understanding of what's</p> <p>20 in the binders that I've been handed this morning?</p> <p>21 A. I believe so.</p> <p>22 Q. And can you just generally describe to</p> <p>23 me what those documents are?</p> <p>24 A. Those are documents that we and I</p>

<p style="text-align: right;">Page 30</p> <p>1 thought would be helpful for me during this 2 deposition to have as reference. 3 Q. And how much time over the course of the 4 last two weeks have you spent preparing for your 5 testimony today? 6 A. Probably between 60 and 70 hours. 7 Q. So it's been a busy two weeks? 8 A. Yes. 9 Q. And the reason why I limit it to just 10 the two weeks is the last time I talked to you, you 11 had in large part not begun to prepare for your 12 testimony for today. Am I stating that accurately? 13 MR. BENSINGER: Objection; vague. 14 BY THE WITNESS: 15 A. Mostly, yeah. 16 BY MR. MOUGEY: 17 Q. Yes, sir. Let me make sure I have that 18 right. 19 So, prior to your time in Pharmaceutical 20 Integrity, early '13, late 2012, you've had to go 21 back and familiarize yourself with Walgreens' 22 policies and procedures related to suspicious order 23 monitoring policies, correct? 24 A. Correct.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. MOUGEY: They are. 2 (WHEREUPON, certain documents were 3 premarked Bratton 30(b)(6) Exhibit 4 Nos 5 through 16; Description given 5 in Index.) 6 BY MR. MOUGEY: 7 Q. All right. I don't want you to take my 8 word for it. We're going to check those. 9 But what you have in front of you, I 10 believe, or what I tried to do was to take the 11 Bates ranges in No. 2 which are incorporated into 12 request 6 and request 7 and those are the stack 13 that's in front of you. Okay? 14 So, what I want -- they should be in 15 Bates order in the same. If you would go to No. 6 16 on Bratton 30(b)(6) 4, I want to go through and 17 check off those Bates ranges that we were -- we 18 were given today to prepare. 19 A. Okay. 20 Q. Let me know when you get to page 6 on 21 Bratton Exhibit 4. 22 MR. MOUGEY: Corey, if you can put the Bates 23 ranges up on the screen, that would be great. 24 BY THE WITNESS:</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And almost all of that preparation for 2 today has been done in the last two weeks. Am I 3 stating that accurately? 4 A. Preparation by me, yes. 5 Q. Yes, sir. So, these notebooks behind 6 me, have you been using those over the last two 7 weeks to prepare yourself for your testimony today? 8 A. They've been part of my preparation, 9 yes. 10 Q. And the notebooks that I have behind me 11 that -- I'm assuming you've been through those and 12 you're familiar with them, correct? 13 MR. BENSINGER: Asked and answered. 14 BY THE WITNESS: 15 A. Fairly familiar, yes. 16 BY MR. MOUGEY: 17 Q. And you -- you've been using those same 18 notebooks over the last two weeks to prepare 19 yourself? 20 A. Yes. 21 Q. So, I'm going to hand you what I'm going 22 to mark as Bratton 30(b)(6) 5 through Bratton 23 30(b)(6) Exhibit 15. Okay. 24 MR. BENSINGER: Counsel, are these premarked?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Okay. 2 BY MR. MOUGEY: 3 Q. So, let's start with the first -- the 4 document in front of you. And does the Bates range 5 begin with 1854? 6 A. Of Exhibit 5? 7 Q. Yes. 8 A. I do not think so, no. 9 Q. Exhibit 5 should look like this. No? 10 MR. BENSINGER: Mr. Mougey, there are two 11 Bates numbers. Perhaps you could direct the 12 witness to the Bates number to which you are now 13 referring. 14 MR. MOUGEY: Thank you. 15 BY MR. MOUGEY: 16 Q. In the bottom, there is two numbers in 17 the right-hand corner and the smaller of which is 18 1854; and I think you and I are on the same 19 document, but I'm not sure. 20 A. Yes. 21 Q. Does it say 1854? 22 A. Yes. 23 Q. Let's check that one off. I tried to 24 get these in order. I'm not entirely sure I did.</p>

<p style="text-align: right;">Page 34</p> <p>1 And if you look at Bratton Exhibit 6, 2 the last three digits are 965. 3 Do you see that, sir? 4 A. Yes. 5 Q. And if you look at Bratton 30(b)(6), the 6 next digit range is 625. 7 Do you see that, sir? 8 A. Yes. 9 Q. Okay. So far we have the first three in 10 a row, right? We have gone through the first three 11 Bates ranges on the bottom of page 6 of the 12 combined discovery responses, right? 13 A. Yes. 14 MR. BENSINGER: Mr. Mougey, you may want to 15 identify Exhibit 7. You just omitted to mention 16 the Bates range is Exhibit 7. 17 MR. MOUGEY: Thank you. 18 BY MR. MOUGEY: 19 Q. And the Bates ranges on Bratton 30(b)(6) 20 Exhibit 8 end with 923. 21 A. Yes. 22 Q. All right. And we can pick up the pace 23 here. 24 Bratton 30(b)(6) Exhibit 9 end with 503?</p>	<p style="text-align: right;">Page 36</p> <p>1 you just referring to Bratton Exhibit 14? 2 MR. MOUGEY: Bratton Exhibit 14, 30(b)(6) 14, 3 ends with Bates No. 027. Yes, sir. 4 MR. BENSINGER: The copy that you handed to me 5 ends with Bates No. 028. I have a loose sheet of 6 paper that ends in Bates No. 027, but it does not 7 have an exhibit sticker upon it. 8 MR. MOUGEY: That's the first page and the 9 loose piece of paper that does not have an exhibit 10 on it is -- if you'd just handwrite it on there for 11 me, that would be great -- that's Exhibit 14. 12 Bratton 30(b)(6) 14. 13 MR. BENSINGER: So, could you just state, so 14 the record is clear, which is the first page and 15 which is the second page of Bratton Exhibit 14. 16 MR. MOUGEY: "Handling Suspicious Orders" is 17 the title of the document, Bates No. 027, which is 18 marked as Exhibit 14, and Bates No. 28 is the 19 second page. Thank you. Okay? 20 BY MR. MOUGEY: 21 Q. Exhibit 15, Bratton 30(b)(6) 15 -- 22 MR. MOUGEY: And, Peter, it looks like I have 23 a dupe. But it's 27 and 28 is the first one. 24 Bratton Exhibit 15 is also Bates No. 028.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Yes. 2 Q. And we're still going in order and we 3 are catching every one on bottom of page 6, top of 4 page 7, right? 5 A. I believe so, yes. 6 Q. And Bratton 30(b)(6) 10 end with the 7 Bates numbers 132. 8 Do you see that? 9 A. Yes. 10 Q. And Bratton 30(b)(6) 11, Bates numbers 11 end with 638. We are still going in order, right? 12 A. Yes. 13 Q. We've got them all so far, correct? 14 A. I believe so. 15 Q. And Bratton 30(b)(6) Exhibit 12 ends 16 with Bates ranges 937? 17 A. Yes. 18 Q. And Bratton 30(b)(6) Exhibit 13 end with 19 Bates ranges Exhibit 342? 20 A. Yes. 21 Q. And Bratton 30(b)(6) Exhibit 14 ends 22 with Bates No. 27, 027? 23 A. Yes. 24 MR. BENSINGER: Excuse me, Mr. Mougey. Were</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. MOUGEY: 2 Q. Do you see that, Mr. Bratton? 3 A. Yes. 4 Q. All right. 5 MR. BENSINGER: Mr. Mougey, the document that 6 you handed to me that has the exhibit sticker 7 Bratton 30(b)(6) Exhibit 15 begins with a Bates 8 No. 957. 9 MR. MOUGEY: And that mark as 16 for me. 10 MR. BENSINGER: So, the exhibit sticker on the 11 document is incorrect and I should change it? 12 MR. MOUGEY: Exactly what I just said. Why 13 don't you mark it as Exhibit 16 for me, Peter. You 14 got it? Great. Thank you. All right. 15 BY MR. MOUGEY: 16 Q. So, it looks like I have got all of the 17 exhibits in combined discovery request 2, 6 and 7 18 regarding Walgreens suspicious order monitoring 19 policies and procedures since January 1, 2006 that 20 we just went through, right? 21 A. I believe so, yes. 22 Q. Okay. Now, you have in front of you it 23 looks like four pages of a listing of specific 24 information. Is that right?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. Is that in the notebooks behind me?</p> <p>3 A. Yes.</p> <p>4 Q. Now, the 12 documents that we have just</p> <p>5 gone through that are a response to suspicious</p> <p>6 order monitoring policies combined discovery</p> <p>7 request 2, 6 and 7, I'm assuming that at least</p> <p>8 based on the stack behind me, there are</p> <p>9 significantly more documents in this stack,</p> <p>10 correct?</p> <p>11 A. There is additional documents in the</p> <p>12 folders, yes.</p> <p>13 Q. What I was prepared to do this morning</p> <p>14 is to have you walk me through Walgreens combined</p> <p>15 discovery request 2 with the documents that I was</p> <p>16 provided to prepare for today and have you explain</p> <p>17 Walgreens' suspicious order monitoring policies and</p> <p>18 procedures.</p> <p>19 Are the documents that I just handed</p> <p>20 you, the 12 different documents that were given to</p> <p>21 me to prepare today, are those not enough to</p> <p>22 provide a complete and accurate description of</p> <p>23 Walgreens' suspicious order monitoring policies and</p> <p>24 do I in fact need to reference the documents behind</p>	<p style="text-align: right;">Page 40</p> <p>1 BY THE WITNESS:</p> <p>2 A. I may need to refer to the binders</p> <p>3 during your questioning.</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. Explain to me what you have in front of</p> <p>6 you on those four sheets.</p> <p>7 A. This is a chronology of the documents</p> <p>8 that are in the three binders.</p> <p>9 Q. A chronology of the documents that are</p> <p>10 in the three binders. And how many different</p> <p>11 documents do you have on those four sheets, unique</p> <p>12 documents?</p> <p>13 A. I'm not sure of the count.</p> <p>14 Q. Take a -- take a SWAG at it.</p> <p>15 A. Probably about 50.</p> <p>16 Q. About 50?</p> <p>17 A. Maybe more.</p> <p>18 Q. And we just went through on combined</p> <p>19 responses to our discovery request in response to</p> <p>20 No. 2, we went through about 12, right?</p> <p>21 A. Correct. These are -- incorporate</p> <p>22 multiple topics, but...</p> <p>23 Q. All right. Why don't we start off with</p> <p>24 the stack that I was given. Okay. Why don't we</p>
<p style="text-align: right;">Page 39</p> <p>1 me?</p> <p>2 MR. BENSINGER: Objection; calls for a legal</p> <p>3 conclusion.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I'm not sure.</p> <p>6 BY MR. MOUGEY:</p> <p>7 Q. I mean do you need documents that are in</p> <p>8 these notebooks behind me or are the 12 documents I</p> <p>9 just gave you sufficient to be able to walk us</p> <p>10 through?</p> <p>11 A. I think it would depend on your</p> <p>12 questions. There could be reference that I might</p> <p>13 like to look at from the binders.</p> <p>14 Q. I would like for you to be able to walk</p> <p>15 me through Walgreens' suspicious order monitoring</p> <p>16 policies, procedures, the criteria used in those</p> <p>17 throughout 2006 until the time -- point in time</p> <p>18 when Walgreens stopped distributing.</p> <p>19 Are the 12 documents that I've given you</p> <p>20 enough for you to testify today on Walgreens'</p> <p>21 position regarding its suspicious order monitoring</p> <p>22 policies or do we need to use the box of documents</p> <p>23 behind me?</p> <p>24 MR. BENSINGER: Objection; vague, compound.</p>	<p style="text-align: right;">Page 41</p> <p>1 start off with the very first document that has the</p> <p>2 Bates No. 1854 and it's titled "Handling Suspicious</p> <p>3 Drug Orders."</p> <p>4 A. Okay. It's Exhibit 5?</p> <p>5 Q. Pardon me?</p> <p>6 A. That's Exhibit 5?</p> <p>7 Q. Exhibit 5. Thank you, yes.</p> <p>8 Now, sir, explain to me what this</p> <p>9 document is. What is it?</p> <p>10 A. This was a document for the distribution</p> <p>11 centers that detailed the policy regarding</p> <p>12 suspicious order reporting.</p> <p>13 Q. If I look under http://snetapp on the</p> <p>14 very bottom of the page.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And is that a designation off of or an</p> <p>18 HTP off of Walgreens' intranet?</p> <p>19 A. I believe so.</p> <p>20 Q. And this is</p> <p>21 handlingsuspiciousdrugorders.htm.</p> <p>22 Do you see that, sir?</p> <p>23 A. Yes.</p> <p>24 Q. And walgreens.com/prodpublishers/dea/</p>

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1 security/handlingsuspiciousorders.htm. Correct?

2 MR. BENSINGER: Objection.

3 BY THE WITNESS:

4 A. Yes.

5 BY MR. MOUGEY:

6 Q. And, sir, this was Walgreens' suspicious

7 order monitoring policy at least of beginning at

8 the beginning of 2006, correct, sir?

9 A. This document indicates it goes back to

10 1998, but at least 2006, yes.

11 Q. It does. You see that in the upper

12 right-hand corner where it says "Originated" --

13 upper-left hand corner, "Originated: 9/8/2008,"

14 correct?

15 Do you see that, "Originated 9/8/98"?

16 A. Oh, '98. Yes.

17 Q. Yes.

18 A. Sorry. I thought you said 2008.

19 Q. I might have. "Originated 9/8/98"?

20 A. Yes.

21 Q. But I don't have the copies from 9/8/98

22 until the revised 2/15/05. Do you see the date

23 right above it?

24 A. I do.

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1 Q. Are you familiar with what reiterations,

2 if any, there were from 9/8/98 to 2/15/05?

3 A. I don't believe we were able to -- to

4 find those documents. So, I'm not familiar with

5 them.

6 Q. So, it originated in some form and

7 fashion in '98; and the next revision we can tell,

8 at least from this document, was in 2/15/2005,

9 correct?

10 A. Correct.

11 Q. "Handling Suspicious Orders. The

12 Logistics and Planning Department sends the

13 Suspicious Control Drug Orders report to all

14 distribution centers. The report lists controlled

15 drug orders that may be of unusual size for a store

16 in its category, of unusual frequency for a store

17 in its category, deviating from a normal pattern

18 for a store in its category."

19 Do you see that?

20 A. I do.

21 Q. Okay. And this manual section is the

22 entirety, this section, of what Walgreens had in

23 place in its manual beginning in 2006, correct?

24 MR. BENSINGER: Objection; mischaracterization.

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1 BY THE WITNESS:

2 A. This document was used by the DCs in

3 conjunction with other policies and procedures that

4 they -- they had based on my interviews with them.

5 BY MR. MOUGEY:

6 Q. Because what we have in front of us, and

7 let's just continue to the next page so we have the

8 whole thing, and this next page is titled "Handling

9 Suspicious Orders and Loss of Controlled Drugs."

10 Do you see that, sir?

11 A. I do.

12 Q. And the "Policy, Distribution centers

13 must file all Suspicious Control Drug Orders

14 reports for five years. The administration manager

15 must complete the Report of Theft of Loss of

16 Controlled Substances (DEA Form 106) when any of

17 the following circumstances occur: A theft of

18 controlled drugs, no matter how small (also file a

19 police report); a substantial loss; all in-transit

20 losses or thefts as described above."

21 I didn't read everything, but does that

22 fairly capture the three bullet points?

23 A. Yes.

24 Q. Okay. Now, is there any other manual

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1 section that encapsulates Walgreens' position at

2 any point in time from 2005 to the beginning of

3 2012?

4 MR. BENSINGER: Objection; mischaracterization.

5 BY THE WITNESS:

6 A. A manual? Not that I have been able to

7 discover or find.

8 BY MR. MOUGEY:

9 Q. Not that you have been able to discover.

10 Not that anybody has shown you, correct?

11 A. Correct.

12 Q. Now, when I say "a manual," are you and

13 I on the same page? A document that encapsulates

14 the policies, procedures, governing Walgreens'

15 conduct to manage suspicious order monitoring

16 policies?

17 A. Correct.

18 Q. Now, this document that we have in front

19 of us, Bratton 30(b)(6) Exhibit 5, does not give

20 any guidance for Walgreens regarding the criteria

21 to use to identify unusual size, correct?

22 A. Correct.

23 Q. It doesn't give any guidance on what

24 constitutes unusual frequency, correct?

<p style="text-align: right;">Page 46</p> <p>1 A. Correct.</p> <p>2 Q. It doesn't give any criteria on what</p> <p>3 constitutes deviating from a normal pattern,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. It doesn't provide any thresholds,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Doesn't provide any parameters, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Doesn't provide any definitions for any</p> <p>12 of those sections, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Now, it does not designate on Bratton</p> <p>15 30(b)(6) Exhibit 5 whether or not suspicious orders</p> <p>16 are sent to the DEA, correct?</p> <p>17 A. It does not in this page, no.</p> <p>18 Q. It doesn't in either of these two pages,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. There is nothing in Walgreens' manual</p> <p>22 about whether or not due diligence is performed</p> <p>23 prior to shipment, correct?</p> <p>24 A. Not on this page, no.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. -- after the 2005 date that would</p> <p>2 describe our handling of.</p> <p>3 Q. A variety of documents?</p> <p>4 A. Um-hmm.</p> <p>5 Q. And that variety of documents, is that</p> <p>6 what you have in kind of a theme list or issue in</p> <p>7 the four pages in front of you?</p> <p>8 A. Some of those characterize our systems</p> <p>9 and policies around controlled substance order</p> <p>10 monitoring.</p> <p>11 Q. If I'm an employee at Walgreens at</p> <p>12 this -- from the date of this manual, 2005 on,</p> <p>13 where would I go to find Walgreens' suspicious</p> <p>14 order monitoring policies and procedures?</p> <p>15 MR. BENSINGER: Objection; mischaracterization.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I believe that those employees would</p> <p>18 reach out to the relevant teams to ask about the</p> <p>19 procedures.</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. The relevant teams. All right.</p> <p>22 Now, there is 250,000 employees at</p> <p>23 Walgreens. Where in this manual section that's in</p> <p>24 play as of '05, where does it tell me who to ask in</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. There is nothing in these two pages,</p> <p>2 Bratton 30(b)(6) Exhibit 5, the Walgreens manual</p> <p>3 that's in play as of 2/15/05, of whether due</p> <p>4 diligence is performed at all on suspicious orders,</p> <p>5 correct?</p> <p>6 A. Not on this document, no.</p> <p>7 Q. Can you point me to any other document</p> <p>8 at Walgreens from -- that was in full force and</p> <p>9 effect at the same time as Bratton Exhibit 30(b)(6)</p> <p>10 5, any document, that encapsulates Walgreens'</p> <p>11 policies and procedures for suspicious order</p> <p>12 monitoring?</p> <p>13 A. During what time period?</p> <p>14 Q. At the time that this policy was in</p> <p>15 effect in this manual section that we're looking at</p> <p>16 in Bratton 30(b)(6) 5.</p> <p>17 A. So, I believe --</p> <p>18 MR. BENSINGER: Objection; mischaracterization.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I believe that this policy is still in</p> <p>21 effect to this day, so there could be a variety of</p> <p>22 documents --</p> <p>23 BY MR. MOUGEY:</p> <p>24 Q. I'm not --</p>	<p style="text-align: right;">Page 49</p> <p>1 that 250,000 people?</p> <p>2 MR. BENSINGER: Objection; mischaracterization.</p> <p>3 BY THE WITNESS:</p> <p>4 A. It does not. However, this policy</p> <p>5 specifically is dealing with DC center employees,</p> <p>6 so it wouldn't be relevant to all 250,000</p> <p>7 employees.</p> <p>8 And from my understanding, the</p> <p>9 distribution center was in contact and knew the</p> <p>10 teams to reach out to if they had questions.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. Oh. So, this policy is, according to</p> <p>13 your testimony today, is just for the distribution</p> <p>14 centers?</p> <p>15 A. I believe so.</p> <p>16 Q. But the distribution centers, sir, what</p> <p>17 was their role in suspicious order monitoring</p> <p>18 policies and procedures at the point in time that</p> <p>19 this manual came into play in 2005, the document we</p> <p>20 have in front of you?</p> <p>21 A. What was --</p> <p>22 MR. BENSINGER: Objection. Objection;</p> <p>23 mischaracterization, vague.</p> <p>24 BY THE WITNESS:</p>

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1 A. What was their role in producing this
2 document? Or what was their role in --
3 BY MR. MOUGEY:
4 Q. What was their role in Walgreens'
5 suspicious order monitoring policies and
6 procedures?
7 A. You want me to describe the actions that
8 they took to monitor?
9 Q. I do. What was their role?
10 A. Sure. So, the distribution center staff
11 would, in early 2006, '7, at this time period,
12 would -- there was a query that they would run in
13 the mornings and they would identify orders of
14 unusual size with that query.
15 They -- the SAIL coordinators would run
16 that and, if they saw fit, would provide additional
17 details to management in the distribution center.
18 Additionally, the staff in the vault at
19 Perrysburg would be familiar with orders and so if
20 they were to see an order of unusual size or
21 quantity, they would reach out to their immediate
22 supervisor, one of which was Deb Bish, and she
23 would -- she -- in our interviews with her, she
24 indicated that if they saw an unusual order, they

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1 would reach out to the store and attempt to
2 investigate what -- why the order was of unusual
3 size and they might modify or change or delete that
4 order depending on the results of their
5 conversations.
6 Q. What is the basis for your -- your
7 testimony? What are you referring to?
8 A. I am -- this is based on interviews with
9 distribution center staff.
10 Q. So, there is no written policy or
11 procedure that you just referenced that -- that
12 process you just referenced?
13 A. Not that I'm aware of for this time
14 period or for the 2005, '6, '7 period, no.
15 Q. Why don't you -- let's do it this way.
16 Why don't you tell me when is the first
17 document that you have that you relied on for your
18 testimony today that, outside of Bratton 30(b)(6)
19 Exhibit 5, from January of 2006 until 12/31 of
20 2008, what written document encapsulates or
21 describes Walgreens' suspicious order monitoring
22 policy and procedures?
23 A. One moment.
24 Some of the processes or procedures

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1 are -- are detailed in an e-mail from our -- from
2 Dwayne Piñon to DEA agent Barbara Dobric, and it
3 discusses how we were reporting at that time; and I
4 believe there was a request at that time to modify
5 the reporting to match the Chemical Handler's
6 Manual Appendix E-3. But it discusses some of the
7 reporting we were doing at that time.
8 Q. The only document -- can you come up
9 with anything else?
10 A. One moment, please.
11 There's another e-mail in 2008 from
12 Dwayne Piñon to Lisa Sullivan in which they discuss
13 some of our reporting practices and monitoring
14 practices pursuant to Appendix E-3.
15 I'm sorry. What was the end of the time
16 frame you were asking? 2008.
17 Q. 12/31/2008.
18 A. I think that's all the documents that I
19 have in that time period.
20 Q. So, the only thing from January 1, 2006
21 to the end of December 2008 is Bratton 30(b)(6) 5
22 that we just went through, right?
23 A. Um-hmm.
24 Q. And two e-mails.

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1 And you just put that notebook away.
2 Would you read those two, the Bates numbers of
3 those two e-mails.
4 A. Sure. Bates No. WAGMDL00387642 through
5 664 -- 645. Ends in 645.
6 Oh, there is a -- there is an additional
7 one, WAGMDL00387646 through 7650. And then the
8 Mapes e-mail is WAGMDL003876635 through 637.
9 Q. So, how many documents total was that?
10 A. I believe that's three.
11 Q. That's three docs.
12 A. Yeah.
13 Q. Is that including Exhibit 5, the policy
14 section?
15 A. No. Four with Exhibit 5.
16 Q. So, four with the policy section?
17 A. Correct.
18 Q. Three e-mails and one policy section.
19 Do I have that right?
20 A. Correct.
21 Q. Now, would you look through the combined
22 discovery responses that we went through, the 12
23 documents. We have the manual.
24 A. This is on page 6 of Response 2?

<p style="text-align: right;">Page 54</p> <p>1 Q. Yes.</p> <p>2 A. Okay.</p> <p>3 Q. The stack that I have provided you.</p> <p>4 A. Yes.</p> <p>5 Q. What other -- which other of the three</p> <p>6 e-mails you referenced are those given in response</p> <p>7 to combined discovery response 2?</p> <p>8 MR. BENSINGER: Objection to form, vague.</p> <p>9 BY THE WITNESS:</p> <p>10 A. So, you're asking are the Bates numbers</p> <p>11 from those e-mails in the response 2?</p> <p>12 BY MR. MOUGEY:</p> <p>13 Q. That's right.</p> <p>14 A. They are not.</p> <p>15 Q. They are not. So, the response to</p> <p>16 combined discovery request 2 that Walgreens was</p> <p>17 ordered to produce, the suspicious order monitoring</p> <p>18 systems policies and procedures since January 1,</p> <p>19 2006, three of the first four documents that you've</p> <p>20 referenced are not in response to that discovery</p> <p>21 request, correct?</p> <p>22 MR. BENSINGER: Objection; vague.</p> <p>23 BY THE WITNESS:</p> <p>24 A. My understanding is that we have</p>	<p style="text-align: right;">Page 56</p> <p>1 A. For example, the new hire documents,</p> <p>2 WAGMDL00245867 that was Exhibit 12 in the Mills</p> <p>3 deposition I believe describes a procedure that</p> <p>4 we -- we used.</p> <p>5 Q. What you have in front of you in those</p> <p>6 four sheets is in large part internal e-mails,</p> <p>7 PowerPoints and internal forms giving updates and</p> <p>8 changing Walgreens' suspicious order monitoring</p> <p>9 system, correct?</p> <p>10 MR. BENSINGER: Objection; compound, vague.</p> <p>11 BY THE WITNESS:</p> <p>12 A. To some extent, yes.</p> <p>13 BY MR. MOUGEY:</p> <p>14 Q. Not to some extent. What I'm asking you</p> <p>15 for is you understand the importance of a manual or</p> <p>16 a similar document encapsulating Walgreens'</p> <p>17 suspicious order monitoring policies and</p> <p>18 procedures, right?</p> <p>19 A. Yes.</p> <p>20 Q. And I'll just be frank with you. The</p> <p>21 problem I'm having, which is probably the same</p> <p>22 problem that you've had the last two weeks spending</p> <p>23 60 or 70 hours, is there is not any documents</p> <p>24 laying out Walgreens' policies and procedures</p>
<p style="text-align: right;">Page 55</p> <p>1 provided the policies and those are listed here.</p> <p>2 Additional to those policies are e-mails as</p> <p>3 evidence of what we were doing at that time, which</p> <p>4 are not in this, as far as I can tell.</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. Well, I'm a little confused, then. So,</p> <p>7 help me out.</p> <p>8 In response to Request No. 2 where we</p> <p>9 ask for policies and procedures, is the only policy</p> <p>10 and procedure in place at any point in time from</p> <p>11 January of 2006 until Walgreens stopped</p> <p>12 distributing, is the only policy and procedure</p> <p>13 Bratton 30(b)(6) 5?</p> <p>14 A. Did that include -- one moment.</p> <p>15 My understanding is there may be</p> <p>16 additional documents that detail our -- what our</p> <p>17 employees were doing at that time. I'm not sure if</p> <p>18 those are a policy or procedure. But they -- I</p> <p>19 mean, I believe they might be a procedure</p> <p>20 describing, for example, later the review of CSO</p> <p>21 flagged orders in the 2012 or '13 time period.</p> <p>22 Q. Are you referring to an e-mail or a</p> <p>23 PowerPoint that was e-mailed around? What are you</p> <p>24 referring to, Mr. Bratton?</p>	<p style="text-align: right;">Page 57</p> <p>1 regarding its suspicious order monitoring policy</p> <p>2 other than manual section in Bratton 5 and some</p> <p>3 reiterations thereto along the way, correct?</p> <p>4 That's it?</p> <p>5 MR. BENSINGER: Objection to form,</p> <p>6 argumentative, mischaracterization.</p> <p>7 BY THE WITNESS:</p> <p>8 A. There is no single document. There is a</p> <p>9 variety of documents that help describe the</p> <p>10 practices of our -- our staff throughout time. But</p> <p>11 there is not a manual, no.</p> <p>12 BY MR. MOUGEY:</p> <p>13 Q. And when I say "no single document," I'm</p> <p>14 not trying to put them in a category. What you're</p> <p>15 referring to in these notebooks that we were handed</p> <p>16 this morning that you've been working from the last</p> <p>17 couple weeks and the notes you have in front of you</p> <p>18 that you've working off of the last couple weeks,</p> <p>19 those are all e-mails, forms and internal</p> <p>20 PowerPoints describing the changes to Walgreens'</p> <p>21 system along -- along the way, correct?</p> <p>22 A. There -- there would also be, like I</p> <p>23 said, some job aids or process descriptions for</p> <p>24 employees.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. Yes, sir. But all in e-mails and</p> <p>2 PowerPoint presentations and internal -- internal</p> <p>3 memorandum, correct?</p> <p>4 A. I believe so.</p> <p>5 Q. There isn't a -- any one place to go get</p> <p>6 Walgreens' suspicious order monitoring policy like</p> <p>7 a manual section other than the manual section</p> <p>8 referenced in Bratton 5, correct?</p> <p>9 MR. BENSINGER: Objection; mischaracterization.</p> <p>10 BY THE WITNESS:</p> <p>11 A. There's no one single document, no.</p> <p>12 BY MR. MOUGEY:</p> <p>13 Q. Now, I want to get all of the</p> <p>14 reiterations I have of 5 in one place. Okay. So,</p> <p>15 I'd like you to go to Bratton 30(b)(6) 14.</p> <p>16 MR. MOUGEY: Peter, I think this is the</p> <p>17 document that I had -- I want to make sure you and</p> <p>18 I are on the same page with the exhibit numbers and</p> <p>19 the one you have front of you is the same one the</p> <p>20 witness has and I have.</p> <p>21 MR. BENSINGER: Would you identify what you</p> <p>22 have, Mr. Mougey, as the current Bates range of</p> <p>23 Exhibit 14.</p> <p>24 MR. MOUGEY: I'm in the process of doing that.</p>	<p style="text-align: right;">Page 60</p> <p>1 BY MR. MOUGEY:</p> <p>2 Q. It appears to be, yes, correct?</p> <p>3 A. Yes, yes.</p> <p>4 Q. They're both titled "Handling Suspicious</p> <p>5 Drug Orders," correct?</p> <p>6 A. Correct.</p> <p>7 Q. Well, let's look at 12. I'm sorry.</p> <p>8 Exhibit 14, Bates No. 27. And I'll read it out</p> <p>9 loud.</p> <p>10 "Effective calendar year 2012, the</p> <p>11 Controlled Substance Order Monitoring and</p> <p>12 Prevention System prevents suspicious control drugs</p> <p>13 from being shipped to the stores. In calendar year</p> <p>14 2012, because of the program mentioned, suspicious</p> <p>15 control drug reports are no longer generated as</p> <p>16 their shipment is prevented by the system."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Did I read that right?</p> <p>20 A. Yes.</p> <p>21 Q. Let's stop right there.</p> <p>22 So, from 2006, January, Bratton</p> <p>23 Exhibit 30(b)(6) 5, suspicious control drug order</p> <p>24 reports were sent to the distribution centers,</p>
<p style="text-align: right;">Page 59</p> <p>1 Exhibit 14 I have as Bates range 27. I think you</p> <p>2 have 27 and 28.</p> <p>3 MR. BENSINGER: Exhibit 14 is a single</p> <p>4 page ending in Bates No. 027?</p> <p>5 MR. MOUGEY: Hence the 27, yes. When I say</p> <p>6 27, that means one page. And then Exhibit 15 is</p> <p>7 Bates No. 28. That's also one page.</p> <p>8 MR. BENSINGER: Thank you.</p> <p>9 MR. MOUGEY: Got it? All right.</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. So, 27 and 28 Bates ranges are updates</p> <p>12 to Walgreens' policies and procedures regarding its</p> <p>13 suspicious order monitoring system, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And let's start with Bratton 14, Bates</p> <p>16 No. 27.</p> <p>17 A. Okay.</p> <p>18 Q. And this appears to be the same manual</p> <p>19 section that we just reviewed in Bratton 5 that's</p> <p>20 been updated in April of 2012, correct?</p> <p>21 MR. BENSINGER: Objection; mischaracterization.</p> <p>22 BY THE WITNESS:</p> <p>23 A. So, the question is is this an updated</p> <p>24 version of Exhibit 5?</p>	<p style="text-align: right;">Page 61</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. Up until 2012 were suspicious order drug</p> <p>4 reports sent to the DEA?</p> <p>5 A. My understanding is that they were --</p> <p>6 the -- they were sent on disk I believe to the DEA,</p> <p>7 yes.</p> <p>8 Q. And can you point to me in Exhibit 5 or</p> <p>9 14 where Walgreens lays out what criteria it used</p> <p>10 to identify the suspicious orders it sent to the</p> <p>11 DEA?</p> <p>12 A. The criteria is not presented in these</p> <p>13 exhibits, no.</p> <p>14 Q. It doesn't list it, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, when you say "in these exhibits,"</p> <p>17 the manual sections, Exhibit 5 and Exhibit 14, do</p> <p>18 not give or identify the criteria for suspicious</p> <p>19 order reports to the DEA, correct?</p> <p>20 MR. BENSINGER: Objection; mischaracterization.</p> <p>21 BY THE WITNESS:</p> <p>22 A. The -- 4 -- excuse me. 5 and 14 don't</p> <p>23 describe the method for adding the orders to the</p> <p>24 report, no.</p>

<p style="text-align: right;">Page 62</p> <p>1 BY MR. MOUGEY:</p> <p>2 Q. In fact, they don't even designate or</p> <p>3 identify that suspicious orders are being sent to</p> <p>4 the DEA, correct?</p> <p>5 A. These do not. However, based on</p> <p>6 interviews, my understanding is that our lost</p> <p>7 prevention and inventory teams were sending those</p> <p>8 to the DEA.</p> <p>9 Q. At what point in time do you believe</p> <p>10 that Walgreens was sending what it believed were</p> <p>11 suspicious orders to the DEA starting in January of</p> <p>12 2006?</p> <p>13 A. My belief is, depending on the time</p> <p>14 frame, there were different criteria. However, in</p> <p>15 2006 to 2012 that we were sending a CD that was</p> <p>16 based on the requirements in the Chemical Handler's</p> <p>17 Manual Appendix 3; and then after the new system</p> <p>18 came into effect, we changed that to orders that</p> <p>19 were identified as part of our SOMS phase 5</p> <p>20 process.</p> <p>21 Q. That's way down the line, right? SOMS</p> <p>22 phase 5 is implemented when?</p> <p>23 A. 2012.</p> <p>24 Q. 2012. Phase 5 is 2012. When in 2012?</p>	<p style="text-align: right;">Page 64</p> <p>1 order monitoring policies and procedures when you</p> <p>2 had to reference some e-mails in that document you</p> <p>3 just referenced. Four out of the five were not</p> <p>4 provided in response to the combined discovery</p> <p>5 request 2, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Let's go back to where we started trying</p> <p>8 to get the totality of Walgreens' manual on</p> <p>9 handling suspicious orders and loss of control</p> <p>10 drugs and if you would, sir, please go to</p> <p>11 Exhibit 15.</p> <p>12 A. Okay.</p> <p>13 Q. Exhibit 15 is dated 4/4/2012.</p> <p>14 Do you see that in the bottom right-hand</p> <p>15 corner?</p> <p>16 A. I do.</p> <p>17 Q. And you can see in the middle of the</p> <p>18 left-hand page originated in 9/8/1998. That was</p> <p>19 the same date that was on Bratton 5, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And then revised 2/15/05, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And then revised in 4/2 of 2012,</p> <p>24 correct?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. One moment. I will get the date.</p> <p>2 Phase -- so, phase 4 was August of '12</p> <p>3 and phase 5 was November of '12 and phase 3 was</p> <p>4 June of '12.</p> <p>5 Q. What Bates number -- I'm sorry. Phase 3</p> <p>6 is June of '12.</p> <p>7 A. Yeah.</p> <p>8 Q. What Bates number are you looking at?</p> <p>9 A. This is WAGMDL00667940 is the page, but</p> <p>10 it's part of a document that starts at 7938.</p> <p>11 Q. I just looked at them quickly, but is</p> <p>12 that a document that is provided to us in response</p> <p>13 to Request No. 2, the suspicious order monitoring</p> <p>14 policies and procedures beginning January 1, 2006?</p> <p>15 So, if you go back to Bratton 4, do you</p> <p>16 see in response to 2, the document you just -- you</p> <p>17 just identified?</p> <p>18 MR. BENSINGER: Objection; vague.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I do not.</p> <p>21 BY MR. MOUGEY:</p> <p>22 Q. So, right now you've identified four --</p> <p>23 you referred to four documents about -- I'm</p> <p>24 sorry -- five documents about Walgreens' suspicious</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Correct.</p> <p>2 Q. All right. So, let's go through Bratton</p> <p>3 30(b)(6) 15.</p> <p>4 "The distribution centers must file all</p> <p>5 suspicious control drug order reports for five</p> <p>6 years."</p> <p>7 When it says "file," what is your</p> <p>8 understanding of what that means?</p> <p>9 A. They would take a -- the -- when it was</p> <p>10 paper and place it in storage or the disk, they</p> <p>11 would place it into storage and retain it for</p> <p>12 recordkeeping purposes, like DEA inspections,</p> <p>13 et cetera.</p> <p>14 Q. So, the -- do you see anything in 15</p> <p>15 that requires that Walgreens file suspicious orders</p> <p>16 on controlled substances with the DEA other than</p> <p>17 the loss form 106?</p> <p>18 A. This document does not describe the</p> <p>19 process that we used to report them, no.</p> <p>20 Q. Do you have an understanding, sir, of</p> <p>21 whether or not the orders were shipped, and I'm</p> <p>22 talking about the time frame that we're looking at</p> <p>23 now, from beginning of 2006 up to this revised</p> <p>24 document Exhibit 15, of whether orders were shipped</p>

<p style="text-align: right;">Page 66</p> <p>1 once they were flagged as suspicious but before due 2 diligence was performed? 3 A. We were not able to find any evidence of 4 suspicious orders that were confirmed suspicious 5 that were shipped to stores. 6 Q. Okay. So, Walgreens didn't have any 7 suspicious orders that were shipped, is that your 8 testimony? 9 A. Confirmed suspicious orders that were 10 shipped, we were unable to find any evidence of 11 that. 12 Q. Keep those three documents in front of 13 you. 14 MR. BENSINGER: Mr. Mougey, I see you are 15 searching for the next exhibit. Would it be 16 convenient to take our first break at this time 17 while you organize? 18 MR. MOUGEY: I have it in my hand, but I 19 appreciate if you'd like to take a break, we can. 20 I have it in my hand. I just wanted to see what 21 number to name it. So, if you would like a break, 22 let me know but I am fine. 23 MR. BENSINGER: Why don't we take a short 24 break. We have been going about an hour, and we</p>	<p style="text-align: right;">Page 68</p> <p>1 suspicious order monitoring policies. You see that 2 here in front of me, right? 3 A. Yes. 4 Q. So, if you go back to combined discovery 5 request 4, we ask for the policies and I was given 6 12 documents, right? 7 A. Yes. 8 Q. You would agree with me that there is -- 9 what do you want to say? -- 100 documents in front 10 of me in these three notebooks? 11 A. Some -- some number, yeah, close to 12 that. 13 Q. You've been working with these three 14 notebooks, amongst others, over the last two weeks 15 in that 60, 70 hours you've been preparing to get a 16 command of what Walgreens' policies and procedures 17 were for its suspicious order monitoring system, 18 correct, sir? 19 A. Correct. 20 Q. Is what you have in front of you the 21 same description of what I have in front of me? 22 I'm going to hand you a page and you can 23 tell me if it's the same as to what -- as what you 24 have.</p>
<p style="text-align: right;">Page 67</p> <p>1 can resume quickly. 2 MR. MOUGEY: Five minutes okay? 3 MR. BENSINGER: Yes. 4 MR. MOUGEY: Okay. 5 THE VIDEOGRAPHER: We are off the record at 6 10:10 a.m. 7 (WHEREUPON, a recess was had 8 from 10:10 to 10:21 a.m.) 9 THE VIDEOGRAPHER: We are back on the record 10 at 10:21 a.m. 11 BY MR. MOUGEY: 12 Q. So, Mr. Bratton, those four sheets that 13 you have in front of you there, those are the first 14 pages of these -- of the two boxes of notebooks 15 I've been given this morning, right? 16 A. This is a compilation of the pages that 17 are -- the chronologies that are in each one of 18 those binders. 19 Q. All right. And Topics 1(a) through 20 1(n), along with 17, 18, 20, 21 and 22, you would 21 agree with me that that all -- that encompasses 22 suspicious order monitoring policies, correct? 23 A. There is some overlap, but yes. 24 Q. So, I have three notebooks of the</p>	<p style="text-align: right;">Page 69</p> <p>1 A. So, this -- what you have is the 2 chronology of that binder. This chronology -- 3 which I also have in my copy. But this chronology 4 is a composite of all three of the binders. 5 Q. Okay. Are the -- and I'm not asking 6 locations. Obviously you have yours in front of 7 you and I have mine in the notebook. 8 Is the content of what you have in front 9 of you the same that I have that was given to me 10 this morning? 11 A. This is compiled from the chronologies 12 that you and I both have in the binders. 13 Q. Clean answer is yes, right? 14 A. Yes. 15 Q. Let me see that back. 16 And you've been working off of that 17 document universe to identify Walgreens' suspicious 18 order monitoring policies over the last two weeks? 19 A. Correct. 20 MR. MOUGEY: I have a real problem with this. 21 Special Master Cohen, we have been asking and 22 asking and asking for Walgreens' suspicious order 23 monitoring policies, policies, procedures, every 24 which way I can think of.</p>

<p style="text-align: right;">Page 70</p> <p>1 I have spent, Ms. Poerschke and I and 2 our team have spent hundreds and hundreds of hours 3 going through e-mails, policies -- I'm sorry -- 4 e-mails, memos, PowerPoints because there is no 5 central place to go figure out what these are. 6 You were told in a request for an 7 extension to 12/21 in response to Request No. 2 and 8 the others we need more time. 9 To walk in this morning and find out 10 that for two weeks we've had an assimilation of 11 what they believe are the important documents 12 responsive to these requests, have charts, have 13 them taped into manila folders, all laying this out 14 and have had them put together for two weeks but 15 yet telling you they are not ready and never 16 supplementing these requests, I have 12 documents. 17 Now, we've spent hundreds of hours 18 trying to duplicate what they're doing, but it sure 19 would have been nice. I don't have the benefit of 20 sitting down and interviewing these 15 or 20 people 21 to help me do that. As you've just heard from 22 Mr. Bratton, he had to go interview people to 23 figure out what this stuff was. 24 The fact that they've had these for two</p>	<p style="text-align: right;">Page 72</p> <p>1 Sunday. We have sat here and to find out they have 2 all this done is just infuriating. 3 So, my ask is let me finish a 4 30,000-foot view so I have a general understanding 5 of where we're going. We'll finish around 6 lunchtime, and let me come back Tuesday and finish 7 with all of these organization that they have that 8 didn't provide to us. That seems like a fair way 9 to do it. And I will spend the rest of the day 10 today and Monday getting ready for Tuesday. 11 SPECIAL MASTER COHEN: Do you want to respond? 12 MR. BENSINGER: We prepared our witness for a 13 30(b)(6) deposition, discharging our duty of 14 preparation. 15 To assist the witness in answering 16 Mr. Mougey's questions, we prepared the chronology 17 as a resource to the witness, which refers to 18 documents, which as a courtesy we provided to 19 Mr. Mougey because we anticipated that the 30(b)(6) 20 witness in responding to questions may wish to 21 refer to corporate knowledge that is in the 22 documents in his binders. 23 All of the documents in the binders have 24 been produced in the case. The fact that the</p>
<p style="text-align: right;">Page 71</p> <p>1 weeks and we don't have them today and so when I 2 took a break, I -- what is my ask? 3 And to sit here and take this deposition 4 today knowing that they have had all this organized 5 and if I go to their system here, if I shift to 6 their notebooks, none of this is marked up. I 7 don't have them highlighted, flagged. I don't -- 8 and I have a different subset. 9 So, what I ask that we do is let me get 10 an understanding, 30,000-foot view from now until 11 lunch, and then give me 48 hours to look through 12 these documents and let me go back and redo this 13 again on Tuesday of this week and go through the 14 documents that they have had for two weeks and the 15 same benefit that they've had. 16 They were ordered to produce this. They 17 said they couldn't do it. They asked for more 18 time, and then to walk in this morning and find out 19 they do it have done and didn't give it to us is 20 and exemplifies the frustration that we have been 21 going through over the last 90 days. 22 I'm just taken aback, to be honest with 23 you. I am biting my tongue not to get more 24 frustrated, but I just -- I'm exhausted. It's</p>	<p style="text-align: right;">Page 73</p> <p>1 witness interviewed certain Walgreens personnel, 2 it's entirely appropriate, foreseeable and the 3 30(b)(6) deposition is an opportunity for the 4 Plaintiff to determine the basis of our 30(b)(6) 5 designee's answers to questions Mr. Mougey has 6 prepared and some of those answers will be based 7 upon information learned in the interviews as 8 opposed to corporate knowledge reflected in the 9 documentation. 10 So, we are here prepared to answer the 11 questions that Mr. Mougey walked in with. 12 The witness has also made clear the 13 binders contain e-mails, they contain PowerPoints, 14 they contain in certain instances statements that 15 are policies, some of which have been identified in 16 the earlier Walgreens response to the 17 Interrogatory, and it's my understanding we have 18 been granted until December 21 to supplement the 19 responses. 20 That supplementation will include 21 certain documents we just identified which are 22 responsive but of which we either weren't aware 23 before or have since discovered. 24 And, so, we are prepared to continue</p>

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1 today to answer questions.
 2 SPECIAL MASTER COHEN: Can I see the manila
 3 folder for just a minute?
 4 MR. BENSINGER: I'm handing to Special Master
 5 Cohen two manila folders that have four letter-size
 6 pages which constitute the composite chronology to
 7 which the witness has referred.
 8 And, Special Master, the purpose of the
 9 chronology was to enable our witness in responding
 10 to a question from Mr. Mougey to readily be able to
 11 identify whether there is corporate knowledge in a
 12 particular document that's already been produced in
 13 the case so that he could save time in responding
 14 to counsel's questions.
 15 SPECIAL MASTER COHEN: Can I ask what the
 16 letters next to the dates D, A and S mean?
 17 MR. BENSINGER: This document has three
 18 columns. It begins with the date. The second
 19 column has designations A, D or S, generally
 20 indicating whether the document relates to the
 21 issue of audits for the A, D refers to DEA
 22 interactions and S refers to suspicious order
 23 monitoring policies or procedures or practices.
 24 So, it's a shorthand to enable the

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1 witness to determine where in the binder a
 2 particular document is located.
 3 MR. MOUGEY: Special Master Cohen, the step
 4 that's obviously missing from this is that they
 5 were ordered to produce exactly what's done in
 6 front of them and told you that it wasn't ready and
 7 they couldn't do it.
 8 That's the problem that they failed to
 9 see is that the witness has just testified that
 10 he's been using these for two weeks all the while
 11 telling you and us they weren't ready when in fact
 12 they were.
 13 And so to come in today -- that's
 14 what -- to come in today and have -- you know how
 15 long we have been asking for simple straight
 16 answers to these so we could get organized.
 17 And to have these 12 documents
 18 responsive and to come in and find out that they
 19 have this all organized, after telling you and I
 20 that they don't and can't do it and want to 12/21,
 21 yes, they told you I will get it to you on 12/21.
 22 That assumes that they don't have all of this done
 23 and just haven't produced it.
 24 And this is -- this is just an example

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1 of what we have been dealing with since the
 2 inception of this litigation and, quite frankly,
 3 it's unfair and it is gamesmanship around the order
 4 and they told you and Judge Polster, asked for an
 5 extension and they are done. It's in large part
 6 done.
 7 Now, if they walked in this morning and
 8 said, "Peter, I have these three documents that we
 9 discovered finalizing our preparation in response
 10 to this," I wouldn't say a word. We could go read
 11 the docs on a break.
 12 To walk in and say here's hundreds of
 13 documents as opposed to the 12 we gave you, that's
 14 not right, and to tell you that they couldn't do it
 15 and in fact it's done sitting here.
 16 MR. BENSINGER: May I reply?
 17 SPECIAL MASTER COHEN: Yes.
 18 MR. BENSINGER: Mr. Mougey has implied that
 19 Walgreens has sat upon these chronologies in these
 20 binders, effectively ambushing him at the last
 21 minute. I represent that's not true.
 22 For the last two weeks we have worked
 23 hard with our witness to identify information
 24 capturing corporate knowledge that the witness does

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1 not have based on personal knowledge, as he
 2 attested earlier this morning.
 3 The composite chronology we created at
 4 the witness' request as an aid to enable him to
 5 more readily find information that both the legal
 6 team and Mr. Bratton identified as likely resources
 7 for him to respond to questions.
 8 So, I just want to clarify it is not the
 9 case that Walgreens counsel or the witness have had
 10 this material available, have sat upon it.
 11 We have been duly diligent in
 12 discharging our duty to prepare and have assembled
 13 these materials throughout this two-week period
 14 since the witness' fact deposition individually in
 15 order to put him in a position to fairly respond to
 16 questions about the state of Walgreens' corporate
 17 knowledge.
 18 SPECIAL MASTER COHEN: So, of the documents
 19 that are listed in the two manila folders, have all
 20 of them been produced already to Plaintiffs?
 21 MR. BENSINGER: Yes.
 22 SPECIAL MASTER COHEN: Have all of them been
 23 identified when they were produced as responsive to
 24 Interrogatory that asks for suspicious orders?

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1 MR. BENSINGER: I don't know the answer to
2 that question. I can inquire. I don't know the
3 answer to that.
4 MR. MOUGEY: I do. And the answer is easy.
5 There is 12 that they identified. That's it. And
6 those are the ones that we walked through this
7 morning and provided to Mr. Bratton and Mr. Bratton
8 testified that he's been using this set of
9 documents for two weeks to get prepared.
10 And I'm not implying that it's an
11 ambush. I'm saying this is an ambush, to walk in
12 this morning after asking for these for months and
13 being told no, we can't do it, no, it's a simple
14 search.
15 If I could give you how many times this
16 firm has told us just to run Google search -- I'm
17 sorry -- run simple searches in the discovery, that
18 it's right there, and to come in and find out that
19 they have been putting -- it's easy, just run a
20 simple search.
21 And to come in and find out that they
22 have four single-spaced pages of documents
23 organized responsive to combined discovery request
24 2, after telling you they couldn't do it, they told

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1 you, Special Master Cohen, "We can't do it, we need
2 more time," the proof is in the pudding. It's
3 done. It's done.
4 And they walk in here today and say this
5 isn't an ambush? They told you they can't do it.
6 It's finished. And to walk in and hand us three
7 boxes, two boxes with binders today, I don't know
8 how you can even say it with a straight face. I'd
9 be embarrassed.
10 SPECIAL MASTER COHEN: I think what you need
11 to do is to pick up with your questioning and see
12 what you can come to understand by noon and then
13 we'll see where we are.
14 MR. MOUGEY: Sounds good. Thank you.
15 BY MR. MOUGEY:
16 Q. I've given you the 12 documents that I
17 was given. These are the tools I was given to take
18 this deposition today in response to Request No. 2.
19 Okay.
20 What I would like for you and I to do is
21 I would like to, from a 30,000-foot view, put
22 together a chart that you and I are working on and
23 I'm going to handwrite in and build out what is in
24 that four pages in front of you that you've been

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1 working with the last two weeks. Okay.
2 So, I'm going to take a clean sheet of
3 typing paper, and I want you to help me build out a
4 chart showing what Walgreens' suspicious order
5 monitoring policies are.
6 And I'm also, to help us, going to pass
7 you what I have -- what's the last exhibit?
8 MS. GARLOCK: 17 is the next.
9 BY MR. MOUGEY:
10 Q. I'm going to hand you what P-WAG-0037
11 that we are going to mark as Bratton 17 to help
12 with this process.
13 (WHEREUPON, a certain document was
14 marked as Bratton 30(b)(6) Exhibit
15 No. 17: Flow chart; P-WAG-0037.)
16 BY MR. MOUGEY:
17 Q. What I'm handing you now is a chart to
18 help facilitate conversation. Okay? May look
19 familiar to some of us.
20 So, I want you to keep 17 handy, and you
21 and I are going to put together this chart; and I
22 want you to -- my handwriting is terrible, so I
23 want you to help me with the language and make sure
24 that I have accurately what you said, because at

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1 the end I want to introduce this chart as an
2 exhibit to give us kind of a 30,000-foot view of
3 what Walgreens' suspicious order monitoring
4 policies were and how they changed over time.
5 Okay?
6 So, the first column I'm going to have
7 is the date range. All right. And I'm going to
8 make this as easy as I can for you.
9 I want you to compartmentalize periods
10 of time of when Walgreens' suspicious order
11 monitoring policies and procedures stayed the same
12 and then walk me across whether due diligence was
13 performed, whether the orders were held prior to
14 being shipped -- I'm sorry -- were held prior to
15 performing due diligence and which department was
16 responsible.
17 So, I'm going to have you help me build
18 this chart across the -- the top of this page.
19 Okay?
20 A. Okay.
21 Q. So, what is the period of time,
22 beginning in January of '06, when is the ending
23 period for a compartmentalization of when
24 Walgreens' suspicious order monitoring policies and

<p style="text-align: right;">Page 82</p> <p>1 procedures remained almost the same?</p> <p>2 MR. BENSINGER: Objection; vague.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Can you restate the date range, please.</p> <p>5 MR. MOUGEY: And I will tell you what. If we</p> <p>6 could just have "Objection to form," that would be</p> <p>7 fantastic. I think that's been more than easy to</p> <p>8 do and just "Objection to the form" would be much</p> <p>9 appreciated.</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. So I'm sorry. You said --</p> <p>12 MR. BENSINGER: Mr. Mougey.</p> <p>13 BY MR. MOUGEY:</p> <p>14 Q. -- you couldn't answer the question?</p> <p>15 A. I was asking you during what time period</p> <p>16 you were referring to.</p> <p>17 Q. I'm asking you to tell me. Okay.</p> <p>18 You tell me what time period you want to</p> <p>19 start with beginning January of '06 until when that</p> <p>20 Walgreens' policies and procedures for its</p> <p>21 suspicious order monitoring process stayed almost</p> <p>22 the same.</p> <p>23 MR. BENSINGER: Objection; vague.</p> <p>24 MR. MOUGEY: Please just object to the form.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes.</p> <p>2 Q. And throughout the entire period of</p> <p>3 time, from '06 to when?</p> <p>4 A. Continues today but not for controlled</p> <p>5 substances obviously.</p> <p>6 Q. '06 to the current?</p> <p>7 A. Correct.</p> <p>8 Q. Fair?</p> <p>9 A. That's my understanding at this time.</p> <p>10 Q. Okay. And what was the criteria for the</p> <p>11 excessive quantity criterias -- queries?</p> <p>12 A. So, it would look at line numbers in</p> <p>13 orders and the parameters of which were adjustable</p> <p>14 by the DC. They didn't -- and then they would run</p> <p>15 that and if it was above the query that they set or</p> <p>16 quantity that they set, the order would be flagged</p> <p>17 and it would generate on a report.</p> <p>18 Q. What's the responsibility of a SAIL</p> <p>19 coordinator?</p> <p>20 A. I don't know all of the responsibilities</p> <p>21 of a SAIL coordinator; but as it relates to this,</p> <p>22 they would run the report and review it. That's my</p> <p>23 understanding.</p> <p>24 Q. So, let's go back to what the criteria</p>
<p style="text-align: right;">Page 83</p> <p>1 I do not --</p> <p>2 SPECIAL MASTER COHEN: He can say "vague."</p> <p>3 MR. BENSINGER: Mr. Mougey.</p> <p>4 SPECIAL MASTER COHEN: You don't need to talk</p> <p>5 to each other. You can say "vague." You can</p> <p>6 ignore it.</p> <p>7 BY THE WITNESS:</p> <p>8 A. So, there's a variety of processes and</p> <p>9 procedures that have existed at different times.</p> <p>10 So, the first one that I would say has</p> <p>11 existed the longest and continues to exist is the</p> <p>12 excessive quantity query and that's a query that</p> <p>13 the DCs would run, the SAIL coordinator at the DC;</p> <p>14 and based on interviews, that goes at least as far</p> <p>15 back as the year 2000 but definitely 2006.</p> <p>16 BY MR. MOUGEY:</p> <p>17 Q. All right. We'll call that excessive</p> <p>18 queries?</p> <p>19 A. Quantity queries, yes.</p> <p>20 Q. And those were performed by the DC?</p> <p>21 A. That is my understanding.</p> <p>22 Q. Which role at the DC?</p> <p>23 A. The SAIL coordinator.</p> <p>24 Q. S-A-I-L, correct?</p>	<p style="text-align: right;">Page 85</p> <p>1 or the parameters were. They would look at line</p> <p>2 numbers in orders. What do you mean by that?</p> <p>3 A. Line items. So, a line would be a</p> <p>4 particular product, its description, a quantity</p> <p>5 that was ordered for that store.</p> <p>6 Q. What would they look at?</p> <p>7 A. If it exceeded a quantity that they set</p> <p>8 in the query, they would then investigate or look</p> <p>9 at those orders.</p> <p>10 Q. And what was the basis for the quantity</p> <p>11 that they set in the criteria?</p> <p>12 A. They did not. Based on my interviews,</p> <p>13 it was difficult to ascertain what that was. As</p> <p>14 best as I can describe it as what they thought was</p> <p>15 normal or customary.</p> <p>16 Q. So, Walgreens did not provide any</p> <p>17 guidance to the DC SAIL coordinators about what</p> <p>18 number of orders was abnormal or suspicious?</p> <p>19 A. Not that we --</p> <p>20 MR. BENSINGER: Objection. Permit me to</p> <p>21 object. Objection; vague.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Not that we have been able to ascertain.</p> <p>24 BY MR. MOUGEY:</p>

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1 Q. Did you -- how many hours did you spend
2 interviewing the DC SAIL coordinators?
3 A. We weren't able to interview a SAIL
4 coordinator that worked during that time frame. We
5 did speak to folks that they reported to or other
6 folks at the DC that would have had knowledge of
7 that process.
8 Q. You didn't speak to anyone that actually
9 ran the queries?
10 A. Not at the time that we were dispensing
11 controls.
12 Q. Do you have examples of what some of the
13 criteria was to use the criterias to -- criteria to
14 identify suspicious orders?
15 A. We had a conversation with Mr. Peterson
16 who described to us when -- he designed or wrote
17 this query initially and he gave us an overview of
18 what it might have looked like and what parameters
19 they might set, but that...
20 Q. In the two boxes that we were just given
21 is a list of Walgreens employees interviewed. So,
22 who did you interview that told you what the
23 process was in the distribution centers on this
24 list?

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1 A. So, Doug Peterson described the query
2 that he authored for them. I then spoke with --
3 let's see. Deb Bish.
4 Q. I'm sorry. Deb who?
5 A. Bish.
6 Q. Oh. Bish. Okay.
7 A. Jen Diebert, Justin Joseph.
8 Q. I'm going to need you to go slower. Who
9 is the next one, Diebert?
10 A. Diebert, yes.
11 Q. Okay.
12 A. Justin Joseph and I believe Steve
13 Kneller.
14 Q. Kneller with a?
15 A. K.
16 Q. So, I have Deb Bish, Jen Diebert, Justin
17 Joseph, Steve Kneller and Doug Peterson are the
18 people you interviewed that were familiar with what
19 queries were run?
20 A. With the excessive quantity query.
21 Q. Is there any other query that was being
22 run by the DC distribution centers to detect
23 suspicious order monitoring policies or procedures?
24 A. Not that they were running, no.

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1 Q. The five people you just mentioned, they
2 all have personal knowledge of the types of queries
3 the SAIL coordinators were running?
4 A. I don't know -- they had knowledge of
5 the process. I don't know if they knew about the
6 query itself. But they -- they confirmed for us
7 that this was something that the SAIL coordinators
8 did.
9 Q. That they had heard from somebody else
10 that they did?
11 A. I believe Deb had more direct knowledge
12 because she was managing the SAIL coordinators, if
13 I'm recalling correctly.
14 Q. And I believe that you mentioned that
15 there was code or something was written that was
16 used for the query. Did I get that right?
17 A. Correct.
18 Q. And who wrote the code?
19 A. Doug. Doug Peterson.
20 Q. Okay. And in preparation for your
21 testimony today, do you know what the criteria was
22 to write -- for that query?
23 A. I do not.
24 Q. You don't know?

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1 A. We were unable to ascertain. My
2 understanding is that they could change that. So,
3 you know, it could have varied over time. But we
4 don't -- we don't know what they were running. It
5 was not stored.
6 Q. In your preparation for your testimony
7 today to explain Walgreens' past/present suspicious
8 order monitoring system, you are pointing to the
9 excessive quantity query run at the distribution
10 centers as one of the tools used, correct, sir?
11 A. That's one of our monitoring processes.
12 Q. And, sir, you recognize that topic (a)
13 in the first notice of 30(b)(6) deposition is your
14 responsibility to understand the past and present
15 suspicious order monitoring system, SOMS program,
16 policies and procedures, correct, sir?
17 A. Correct.
18 Q. And you would agree with me, sir, that
19 from '06 to the current, one of the tools that
20 you've identified was the excessive quantity
21 queries, and you are unable today to explain what
22 the formula used to run that query, correct, sir?
23 A. Well, the formula would be that if the
24 line items quantity exceeded a number, it would be

<p style="text-align: right;">Page 90</p> <p>1 flagged on the report that morning.</p> <p>2 Q. Right. But you don't know, after your</p> <p>3 60, 70 hours of preparation over the last two</p> <p>4 weeks, you were unable to ascertain the number on</p> <p>5 the very first tool you identified, the excessive</p> <p>6 quantity query, you don't know what the formula for</p> <p>7 that query is, right? Just that it exceeded some</p> <p>8 number, right?</p> <p>9 A. Well, we know --</p> <p>10 MR. BENSINGER: Objection; argumentative.</p> <p>11 BY THE WITNESS:</p> <p>12 A. We are aware of the formula. We don't</p> <p>13 know the parameter that the DCs would have used</p> <p>14 each day to run that.</p> <p>15 BY MR. MOUGEY:</p> <p>16 Q. Your knowledge of the formula is that it</p> <p>17 exceeds a certain line item, correct?</p> <p>18 A. Yeah.</p> <p>19 Q. That is the extent of your knowledge of</p> <p>20 the formula for the excessive quantity query is</p> <p>21 that it just exceeds X. Do I have that accurate?</p> <p>22 A. Correct.</p> <p>23 Q. You have no idea as a result of your</p> <p>24 preparations for today what the formula is or what</p>	<p style="text-align: right;">Page 92</p> <p>1 to one of the other managers within the facility</p> <p>2 who would then try to understand why the store was</p> <p>3 ordering that quantity.</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. And, sir, you would agree with me that</p> <p>6 the orders that appeared based on the excessive</p> <p>7 quantity queries were suspicious reports,</p> <p>8 suspicious orders?</p> <p>9 A. They were possibly suspicious orders.</p> <p>10 Q. And was due diligence performed on those</p> <p>11 possibly suspicious orders before they were</p> <p>12 shipped?</p> <p>13 A. My understanding from interviewing the</p> <p>14 DC staff is that they would investigate why the</p> <p>15 store had placed that quantity before shipping the</p> <p>16 order.</p> <p>17 Q. So, let's go to the chart that I have in</p> <p>18 front of you with the -- not the one I have on the</p> <p>19 Elmo, but the one that's in front of you. Help me</p> <p>20 out with what exhibit number that is.</p> <p>21 A. 17 it is marked.</p> <p>22 Q. All right. So, we're at the very top</p> <p>23 of -- we're at the very top of this page, "Order</p> <p>24 Received." Okay.</p>
<p style="text-align: right;">Page 91</p> <p>1 was used by the SAIL coordinators in the</p> <p>2 distribution centers to identify suspicious orders</p> <p>3 that were defined by excessive?</p> <p>4 A. We are not able to determine what the</p> <p>5 number was that they used in that formula.</p> <p>6 Q. So, the easy answer to my question is</p> <p>7 yes, I don't know what the formula that was used to</p> <p>8 identify suspicious orders based on excessive line</p> <p>9 quantity at the distribution center, right?</p> <p>10 MR. BENSINGER: Objection; mischaracterization.</p> <p>11 BY THE WITNESS:</p> <p>12 A. If the formula -- the formula was if the</p> <p>13 quantity is greater than X, it would be flagged.</p> <p>14 The value that they used for X I do not know.</p> <p>15 BY MR. MOUGEY:</p> <p>16 Q. Now, let's keep going with that process</p> <p>17 with the excessive quantity query.</p> <p>18 So, the formula that we don't know what</p> <p>19 it is, if an order is triggered, what happens next?</p> <p>20 MR. BENSINGER: Objection; mischaracterization.</p> <p>21 BY THE WITNESS:</p> <p>22 A. So, if an order were to appear as a</p> <p>23 result of running the excessive quantity query, the</p> <p>24 SAIL coordinator would investigate or escalate that</p>	<p style="text-align: right;">Page 93</p> <p>1 It goes into the distribution centers.</p> <p>2 "Is order suspicious? Yes. No." You following</p> <p>3 me?</p> <p>4 A. Um-hmm.</p> <p>5 Q. Do you agree with this decision tree</p> <p>6 that if an order is suspicious, it wasn't shipped?</p> <p>7 MR. BENSINGER: Objection; vague.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I'm sorry. You said if the order isn't</p> <p>10 suspicious it wasn't shipped?</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. Let's do it through this chart. You see</p> <p>13 the order is received at the very top, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And -- so, an order comes in. Let's</p> <p>16 just realtime it at a pharmacy. Pharmacist types</p> <p>17 in an order in one of the pharmacies, correct?</p> <p>18 A. Well, the orders placed at the pharmacy</p> <p>19 would release from the system at a specified time,</p> <p>20 but at the end of the day they would transmit to</p> <p>21 the DC.</p> <p>22 Q. But they originated with the pharmacist,</p> <p>23 correct?</p> <p>24 A. They could be a system-recommended order</p>

<p style="text-align: right;">Page 94</p> <p>1 or a pharmacist-generated order.</p> <p>2 Q. And those orders then would go to the</p> <p>3 DC, correct, distribution center?</p> <p>4 A. Correct.</p> <p>5 Q. And the excessive quantity query is run</p> <p>6 on the orders that were received on a daily basis?</p> <p>7 A. My understanding from the interviews</p> <p>8 that I conducted is that the orders for the</p> <p>9 previous evening, before they were picked, in the</p> <p>10 morning they would run this query to determine if</p> <p>11 there was anything on that report that they needed</p> <p>12 to address.</p> <p>13 Q. And do you have or can you point me to</p> <p>14 any examples of those reports, the excessive</p> <p>15 quantity query?</p> <p>16 A. I do not have a document that shows</p> <p>17 those, no.</p> <p>18 Q. So, that query is being run from '06 to</p> <p>19 the current, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And no one can find one copy or an</p> <p>22 example of that excessive quantity query?</p> <p>23 A. I'm not sure that it produces -- I'm not</p> <p>24 sure that it produces a deliverable. It displays</p>	<p style="text-align: right;">Page 96</p> <p>1 A. We could determine the value -- again,</p> <p>2 we know the formula. We could determine the value</p> <p>3 used by the DC today for orders that they were</p> <p>4 shipping today, yes.</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. Sir, you don't know the formula. You</p> <p>7 just know greater than X. When you say "I know the</p> <p>8 formula," your definition of "know the formula,"</p> <p>9 your definition of being prepared today is I know</p> <p>10 excessive quantity report was more than X. Is</p> <p>11 that -- I'm not mischaracterizing that, correct?</p> <p>12 A. I would characterize that as a formula,</p> <p>13 yes.</p> <p>14 Q. More than X?</p> <p>15 A. Correct.</p> <p>16 Q. I don't know if it's 90 times more than</p> <p>17 X, 1.5 times more than X. We don't know, right?</p> <p>18 A. Because it's adjustable by the staff at</p> <p>19 the DC, we do not know the value.</p> <p>20 Q. We don't even know what X is really,</p> <p>21 right? We don't know if it's based on one week.</p> <p>22 We don't know if it's based on four weeks. We</p> <p>23 don't know if it's a based on a quarter. We don't</p> <p>24 know if it's 26. We don't know if it's 52 weeks.</p>
<p style="text-align: right;">Page 95</p> <p>1 results on the screen that they then go address.</p> <p>2 So, I don't know that they're printing it out and</p> <p>3 walking around with it.</p> <p>4 Q. I'm not asking you if they are walking</p> <p>5 around with it. You understand that they can be</p> <p>6 saved on a computer or on a hard drive or a shared</p> <p>7 drive or anything along those lines, right?</p> <p>8 A. I understand they could be. I don't</p> <p>9 know that they are saving them is my -- what I'm</p> <p>10 saying.</p> <p>11 Q. In any shape, form or fashion, no one</p> <p>12 could produce, electronically, paper, an example of</p> <p>13 one of these reports being generated?</p> <p>14 A. Not that we were able to find.</p> <p>15 Q. And they're still being run until today.</p> <p>16 You said to the current time?</p> <p>17 A. Correct. So, we could run one, but it</p> <p>18 would only be for regular drugs at this point.</p> <p>19 Q. So, preparing yourself for this today to</p> <p>20 understand what the formula was, you or someone at</p> <p>21 your direction could have run one of these reports</p> <p>22 to figure out what the formula was, correct?</p> <p>23 MR. BENSINGER: Objection; mischaracterization.</p> <p>24 BY THE WITNESS:</p>	<p style="text-align: right;">Page 97</p> <p>1 Right?</p> <p>2 A. It would be the orders for the work in</p> <p>3 progress that morning. So, it would be orders that</p> <p>4 are pending to be picked that day.</p> <p>5 Q. So, X is out of this batch of docs, are</p> <p>6 there any big ones? Out of this batch of orders</p> <p>7 are there any large ones?</p> <p>8 A. Correct.</p> <p>9 Q. And is it more than X?</p> <p>10 A. Correct.</p> <p>11 Q. So, it just depends on any given day</p> <p>12 what the universe of those orders is, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And yet these are still being run as we</p> <p>15 sit here today, yet you didn't ask anyone to pull</p> <p>16 one of those so you could figure out what greater</p> <p>17 than X was, correct?</p> <p>18 A. We did not ask for one to be pulled on</p> <p>19 the basis that we -- that doesn't establish the</p> <p>20 quantity that they would have used in the formula</p> <p>21 at the time that we were shipping controlled</p> <p>22 substances from our DCs. So, no, we didn't ask</p> <p>23 them.</p> <p>24 Q. And you could not find anything, past,</p>

<p style="text-align: right;">Page 98</p> <p>1 present, identifying what those formulas were in 2 any form of a manual or operations guide or 3 anything along those lines, right? 4 A. Not that we have been able to uncover, 5 no. 6 Q. Did you reach out to any of the former 7 distribution SAIL coordinators to ask them? 8 A. We spoke with Deb Bish who managed that 9 function in Perrysburg. We talked to her about it, 10 but she was not able to recall what the value was 11 that they would have used. 12 Q. And that's a little different than the 13 question I asked. I didn't ask if you spoke to 14 anyone that managed them. 15 I asked you did you reach out to any of 16 the former distribution SAIL -- distribution center 17 SAIL coordinators to ascertain the information 18 about what formula, what the specific formula was? 19 A. There was -- Deb had -- there was an 20 employee that worked at the time when we were 21 shipping controls from that facility, and Deb tried 22 to contact her but when she did, Deb informed us 23 that that employee didn't have any knowledge of or 24 recollection of what the values were in that query.</p>	<p style="text-align: right;">Page 100</p> <p>1 BY THE WITNESS: 2 A. We don't know the value that they used 3 in the formula at that time, no. 4 BY MR. MOUGEY: 5 Q. And we don't have any manual or 6 operation, guidance or anything from Walgreens 7 giving the DC SAIL coordinators about what to use 8 or how to run the query? 9 A. Not that the folks we interviewed could 10 recall, no. 11 Q. Let's go back to the code that you said 12 that was written. What kind of code was written if 13 there was no built-in formula? 14 A. So, it would be a SQL query that they 15 would run on the ordering system and there would be 16 a parameter, a value, again, that they could 17 update. 18 Q. And the DC SAIL coordinators could 19 change that as they saw fit? 20 A. Correct. 21 Q. And you couldn't find any training 22 material used for any of the SAIL coordinators when 23 making a decision about what the formula was? 24 A. My understanding of the training of the</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So, we don't know what the formula. We 2 don't have any examples and there is no written 3 guidance. Correct? 4 MR. BENSINGER: Objection. 5 BY MR. MOUGEY: 6 Q. Did I get that all right? 7 MR. BENSINGER: Objection; mischaracterization, 8 compound. 9 BY THE WITNESS: 10 A. Again, if we know that it's greater than 11 X, we don't know the value that they plugged into 12 that formula, but -- there is no written documents. 13 BY MR. MOUGEY: 14 Q. Let me do that one more time to make 15 sure I get the complete answer. 16 What I asked you was we don't have any 17 examples, correct? 18 A. Correct. 19 Q. We don't have the formula for the 20 excessive quantity query, correct, the specific 21 formula? 22 A. We don't know -- 23 MR. BENSINGER: Objection. 24 THE WITNESS: Sorry, Pete.</p>	<p style="text-align: right;">Page 101</p> <p>1 SAIL coordinators is as we brought new DCs online, 2 they would go shadow another SAIL coordinator at 3 another facility, but they -- we weren't able to 4 find any documents regarding that training. 5 Q. Can you point me to any due diligence 6 files at any point in time that the excessive 7 quantity query was being run as to what the SAIL 8 coordinators were doing? 9 MR. BENSINGER: Objection; vague. 10 BY THE WITNESS: 11 A. We were not able to find any files that 12 details the due diligence related to the excessive 13 quantity query. 14 BY MR. MOUGEY: 15 Q. Let me go to (h) on Bratton Exhibit 2, 16 which is "Your past/present policies and procedures 17 related to due diligence following the detection of 18 a suspicious order." 19 Did I read that right? Do you have it 20 in front of you? 21 A. This is page 6. 22 Q. Page 6. 23 A. A? 24 Q. H as in --</p>

<p style="text-align: right;">Page 102</p> <p>1 A. H as in Henry.</p> <p>2 Q. -- Henry.</p> <p>3 "Your past/present policies and</p> <p>4 procedures related to due diligence following the</p> <p>5 detection of a suspicious order."</p> <p>6 Did I read that right?</p> <p>7 A. Yes.</p> <p>8 Q. And your testimony is that the excessive</p> <p>9 quantity query run by the DC, if an order was</p> <p>10 flagged, the SAIL coordinator would perform due</p> <p>11 diligence, correct?</p> <p>12 A. That's what they describe to me, yes.</p> <p>13 Q. But you have not spoken to anyone that</p> <p>14 had firsthand knowledge of that actually being</p> <p>15 done, correct?</p> <p>16 A. There were folks from the DCs that were</p> <p>17 familiar with the process and told me that that's</p> <p>18 what was done.</p> <p>19 Q. None of the people that you spoke with</p> <p>20 that are still at Walgreens were the individuals</p> <p>21 responsible for actually performing the due</p> <p>22 diligence, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Now, were you able to identify any</p>	<p style="text-align: right;">Page 104</p> <p>1 right so far, right?</p> <p>2 The specific criteria is "Line item,</p> <p>3 what they thought was normal." Do I have that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. But "Don't know specific formula." Is</p> <p>7 that accurate?</p> <p>8 A. Correct.</p> <p>9 Q. Okay.</p> <p>10 MR. BENSINGER: Objection; mischaracterization.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. "Possible suspicious orders" is next and</p> <p>13 the answer is yes, correct?</p> <p>14 A. I'm sorry. So, possible suspicious --</p> <p>15 that we've discovered possibly suspicious orders --</p> <p>16 Q. Yes.</p> <p>17 A. -- using this process? Yes.</p> <p>18 Q. And your testimony is that due diligence</p> <p>19 was performed on those -- on those orders based on</p> <p>20 your getting prepared today and interviewing these</p> <p>21 witnesses, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Yet you can't find any policy and</p> <p>24 procedures that were -- that were written, correct,</p>
<p style="text-align: right;">Page 103</p> <p>1 policies or procedures related to the type of due</p> <p>2 diligence that the SAIL coordinators were supposed</p> <p>3 to be performing on orders that were flagged in</p> <p>4 response to the excessive quantity query?</p> <p>5 A. The procedure described to me by the</p> <p>6 folks we interviewed was that they would call the</p> <p>7 store and discuss the order with the store in an</p> <p>8 attempt to determine if it was appropriate.</p> <p>9 Q. The question I asked you was a little</p> <p>10 different. The question I asked you -- well, I</p> <p>11 guess I said policies or procedures. I didn't say</p> <p>12 in writing. So, let me do it that way.</p> <p>13 Were you able to identify any written</p> <p>14 policies or procedures related to the type of due</p> <p>15 diligence that the SAIL coordinators were supposed</p> <p>16 to be performing on orders that were flagged in</p> <p>17 response to the excessive quantity query?</p> <p>18 A. No.</p> <p>19 Q. What I just wrote down on our chart is</p> <p>20 "Policies and procedures written," and the answer</p> <p>21 is no, correct?</p> <p>22 A. Correct.</p> <p>23 Q. So, "'06 to current, excessive quantity</p> <p>24 queries, the DC SAIL coordinator." I got that</p>	<p style="text-align: right;">Page 105</p> <p>1 sir?</p> <p>2 A. Correct.</p> <p>3 Q. Now, you had policies and procedures</p> <p>4 that were verbally described, correct?</p> <p>5 A. They were described to me verbally.</p> <p>6 Q. And what were those?</p> <p>7 A. That they would run the query each</p> <p>8 morning, identify orders and then escalate or</p> <p>9 investigate those.</p> <p>10 Q. And they would call the pharmacy?</p> <p>11 A. That's what was described to me. They</p> <p>12 would call the store, yes.</p> <p>13 Q. And just to make sure I'm clear. There</p> <p>14 is nothing in writing giving the SAIL coordinators</p> <p>15 about what kind of questions to ask, what kind of</p> <p>16 due diligence to perform, correct?</p> <p>17 A. Not that we were able --</p> <p>18 Q. There is no training material you could</p> <p>19 identify, right?</p> <p>20 A. Correct.</p> <p>21 Q. So, sitting here today, sir, you were --</p> <p>22 are unable to testify to the specific past policies</p> <p>23 and procedures related to due diligence following</p> <p>24 the detection of a suspicious order other than the</p>

<p style="text-align: right;">Page 106</p> <p>1 fact that there was some done?</p> <p>2 MR. BENSINGER: Objection; argument.</p> <p>3 BY THE WITNESS:</p> <p>4 A. As it relates to the excessive quantity</p> <p>5 query, we're relying on the test -- or the</p> <p>6 interviews I conducted with DC staff that they</p> <p>7 would run this each day and then investigate as</p> <p>8 appropriate.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. And I appreciate that, but I would like</p> <p>11 is a simple answer to my question. Okay.</p> <p>12 My question was: Sitting here today,</p> <p>13 you are unable to testify to the specific past</p> <p>14 policies and procedures related to due diligence</p> <p>15 following the detection of a suspicious order other</p> <p>16 than the fact that there was some done. That's</p> <p>17 accurate, right?</p> <p>18 MR. BENSINGER: Objection. That's argument.</p> <p>19 BY THE WITNESS:</p> <p>20 A. They would call the store and discuss</p> <p>21 with the store why they were ordering the quantity</p> <p>22 and then based on the response given, they may</p> <p>23 modify, ship or delete the order.</p> <p>24 BY MR. MOUGEY:</p>	<p style="text-align: right;">Page 108</p> <p>1 as a result of the excessive quantity query?</p> <p>2 A. Not in writing. Just based on the</p> <p>3 interviews that we conducted with the staff.</p> <p>4 Q. So, I'm going to have this redone when</p> <p>5 we have some time so it can be read a little</p> <p>6 easier, but the last column I have is that there is</p> <p>7 "No due diligence files." Is that accurate?</p> <p>8 A. I believe so.</p> <p>9 Q. So, let's go back to Bratton 30(b)(6)</p> <p>10 17. An order comes into the distribution center,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And at the distribution center it's your</p> <p>14 testimony that there were reports run to identify</p> <p>15 whether or not an order is suspicious, right?</p> <p>16 A. They would run the excessive quantity</p> <p>17 query each morning, yes.</p> <p>18 Q. And the -- once an order was flagged on</p> <p>19 that excessive order quantity query, it was not</p> <p>20 shipped, correct?</p> <p>21 A. Not until based on the -- what I was</p> <p>22 told, that until they were able to clarify what was</p> <p>23 occurring with that order. They wouldn't just ship</p> <p>24 it.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. But what I asked was: Can you point us</p> <p>2 to any specific guidelines or criteria or anything</p> <p>3 in writing giving the SAIL coordinators guidance on</p> <p>4 what questions to ask when performing their due</p> <p>5 diligence on a suspicious order?</p> <p>6 A. No, not in writing.</p> <p>7 Q. Thank you. Sitting here today, sir,</p> <p>8 were you able to locate one example, anything in</p> <p>9 writing, of a due diligence file on the orders that</p> <p>10 were flagged as a result of the excessive quantity</p> <p>11 query?</p> <p>12 MR. BENSINGER: Objection; asked and answered.</p> <p>13 BY THE WITNESS:</p> <p>14 A. No written documents, no.</p> <p>15 BY MR. MOUGEY:</p> <p>16 Q. Let me make sure based on your last</p> <p>17 answer that no one is walking around with a</p> <p>18 document. When I say "in writing," I mean recorded</p> <p>19 in a computer or a database. Are we on the same</p> <p>20 page?</p> <p>21 A. Not that -- not that was saved, no.</p> <p>22 Q. Anything -- any memorialization?</p> <p>23 A. No.</p> <p>24 Q. Of any due diligence ever, any examples</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And once that DC SAIL coordinator</p> <p>2 determined that that order was not suspicious, it</p> <p>3 would go in this "Yes" column over here, correct?</p> <p>4 I'm sorry. I got it backwards. Let's</p> <p>5 keep going.</p> <p>6 "Is Order Suspicious? No." It would be</p> <p>7 shipped, right?</p> <p>8 A. Well, I would say it would go "Yes.</p> <p>9 Conduct due diligence. Is the suspicion dispelled?</p> <p>10 Yes." And then it would be shipped.</p> <p>11 Q. So, "Order Received. Is order</p> <p>12 suspicious?"</p> <p>13 You would agree with me that any order</p> <p>14 that is flagged on the excessive quantity criteria</p> <p>15 would be flagged as a potential suspicious order,</p> <p>16 correct?</p> <p>17 A. Potentially suspicious, yes.</p> <p>18 Q. Yes, sir. And if it was not flagged on</p> <p>19 the potential suspicious query, then it would go in</p> <p>20 this "No" circle to the right, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And it would be shipped?</p> <p>23 A. Potentially.</p> <p>24 Q. What else -- what other processes were</p>

<p style="text-align: right;">Page 110</p> <p>1 in place that it would not be shipped?</p> <p>2 A. So, my understanding from talking to the</p> <p>3 DC staff is that there was also -- the employees</p> <p>4 that were working in the control vault would, when</p> <p>5 they go to -- they would receive an order, they</p> <p>6 would go to pick it and if it was an unusual</p> <p>7 quantity or something was off to them, they would</p> <p>8 then escalate that and then it would be</p> <p>9 investigated as well. So, there's a second.</p> <p>10 But as far as the excessive quantity</p> <p>11 query is concerned, it could end up being shipped.</p> <p>12 Q. So, if the order popped or was flagged</p> <p>13 on the excessive quantity query, the SAIL</p> <p>14 coordinator would then call the pharmacy to</p> <p>15 inquire, correct?</p> <p>16 A. The SAIL coordinator or employees of the</p> <p>17 DC.</p> <p>18 Q. Employees of the DC, the distribution</p> <p>19 center?</p> <p>20 A. Correct.</p> <p>21 Q. I mean, like what kind of employees?</p> <p>22 A. When I spoke with Deb, she called</p> <p>23 sometimes she said -- I'm -- she couldn't give me a</p> <p>24 definitive list of who might be calling, but it</p>	<p style="text-align: right;">Page 112</p> <p>1 diligence, contacting the pharmacies, the only</p> <p>2 person you can say for sure is Deb Bish?</p> <p>3 A. She had firsthand accounts of calling</p> <p>4 stores to do due diligence, yes.</p> <p>5 Q. So, I'm now in this square, "Conducting</p> <p>6 Due Diligence." You're in agreement with me so far</p> <p>7 on this process, right?</p> <p>8 A. Correct.</p> <p>9 MR. BENSINGER: Objection; vague.</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. And "Are Suspicions Dispelled?" Do you</p> <p>12 see that in the bottom left-hand corner?</p> <p>13 A. Yes.</p> <p>14 Q. If the answer is yes, the order is</p> <p>15 shipped, correct?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. When you say you believe so, what's --</p> <p>18 what's keeping you from saying yes or no?</p> <p>19 A. There's possibility, again, that the</p> <p>20 pickers might flag a concern.</p> <p>21 Q. Okay. Who are the pickers?</p> <p>22 A. Those are the folks that are working in</p> <p>23 the C-II vault that actually go get the order and</p> <p>24 get it ready to be put in boxes or totes to go out</p>
<p style="text-align: right;">Page 111</p> <p>1 sounded like to me either the SAIL coordinator,</p> <p>2 herself as the function manager. Those were the</p> <p>3 ones that she mentioned.</p> <p>4 Q. So, we don't really have anything in</p> <p>5 writing giving guidance to the folks calling, and</p> <p>6 we really don't even know who was calling. Is that</p> <p>7 a fair statement?</p> <p>8 A. We don't know a complete list of who was</p> <p>9 calling.</p> <p>10 Q. Other than maybe some folks from the</p> <p>11 distribution center, we don't really know who was</p> <p>12 calling to perform the due diligence either,</p> <p>13 correct?</p> <p>14 MR. BENSINGER: Objection; mischaracterization.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I know definitively based on her first</p> <p>17 accounts that Deb Bish at time called to confirm</p> <p>18 those orders herself, and she mentioned that the</p> <p>19 SAIL coordinators might also call.</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. Might, but we're not sure?</p> <p>22 A. We can't be sure, no.</p> <p>23 Q. Okay. So, other than one person, in</p> <p>24 preparing for today to who performed the due</p>	<p style="text-align: right;">Page 113</p> <p>1 of the DC.</p> <p>2 Q. Where did you learn the language</p> <p>3 "pickers"? Where did it come from?</p> <p>4 A. In discussions with the DC staff.</p> <p>5 Q. In getting prepared?</p> <p>6 A. Yes.</p> <p>7 Q. Had you ever heard the word "pickers" or</p> <p>8 the description "pickers" for folks that worked in</p> <p>9 the DC vault before getting prepared for this</p> <p>10 30(b)(6)?</p> <p>11 A. Not as it relates to the DC vault. I've</p> <p>12 heard it in relation to other functions in</p> <p>13 distribution centers.</p> <p>14 Q. I'm sorry. I just got sidetracked.</p> <p>15 What would be a reason why after the</p> <p>16 SAIL coordinators or whoever was calling for the --</p> <p>17 to the pharmacies to ask questions about the order</p> <p>18 that was flagged, what other process was in place</p> <p>19 that might prevent it from being shipped?</p> <p>20 A. So, when they -- the folks working in</p> <p>21 the C-II vault would have the order and they would</p> <p>22 go to the shelf to get the product off the shelf,</p> <p>23 they might notice it was an unusual order, unusual</p> <p>24 quantity or size, and then they might also escalate</p>

<p style="text-align: right;">Page 114</p> <p>1 that to be investigated in addition to the SAIL 2 coordinator's efforts. 3 So, there's a possibility that on 4 certain orders the SAIL coordinator might have 5 called and the C-II function manager. 6 Q. So, "Are Suspicions Dispelled? No." 7 You see this kind of red or pink-colored circle. 8 And then "Do Not Ship Order." 9 Do you see that? 10 A. Yes. 11 Q. Do you believe this kind of flowchart or 12 diagram is an accurate depiction of Walgreens' 13 systems to identify suspicious orders, perform due 14 diligence and then ship those orders? 15 MR. BENSINGER: Objection; vague. 16 BY THE WITNESS: 17 A. As it relates specifically to the 18 processes in place on the day of at the DC, it's 19 mostly accurate, though I would say what probably 20 would happen in a flowchart would be, "Are 21 suspicions dispelled by the SAIL coordinator? Yes. 22 Order is released to be picked." And then that 23 other process would occur underneath that could 24 contain some of these same loops about due</p>	<p style="text-align: right;">Page 116</p> <p>1 well. 2 Q. Okay. Now, would you agree, then, that 3 the distribution center employees, when I say 4 "you," I mean Walgreens, that the distribution 5 center employees are an important part of 6 Walgreens' suspicious order monitoring system? 7 A. Yes. 8 Q. You would agree, then, that Walgreens' 9 distribution center employees are the front line 10 outside of the pharmacists when detecting 11 suspicious orders? 12 MR. BENSINGER: Objection; vague. 13 BY THE WITNESS: 14 A. They are the last person to interact 15 with an order before it ships. 16 BY MR. MOUGEY: 17 Q. Would you agree that distribution center 18 employees are backstops to the pharmacist for 19 identifying suspicious orders? 20 MR. BENSINGER: Objection; vague. 21 BY THE WITNESS: 22 A. I'm not sure what you mean by the 23 relationship between the DC and the pharmacist. 24 Can you expand on that?</p>
<p style="text-align: right;">Page 115</p> <p>1 diligence and dispelling suspicions. 2 Also, it was told to me by the DC staff 3 that they might modify an order under certain 4 circumstances and then ship it. So, there's 5 another path there. 6 BY MR. MOUGEY: 7 Q. What criteria would it be that the DC 8 staff would modify an order and then ship it? 9 A. Based on the interviews, they would 10 indicate there might be times when a store meant to 11 order, for example, 100 tablets but they 12 accidentally -- they keyed in 100 not realizing 13 that they were ordering 100 bottles; and based on 14 the discussion with the store, they would come to 15 understand that fact, change the quantity to what 16 the store actually wanted, which would be like, in 17 this example, one bottle of 100, and then they 18 would release that to be shipped. 19 Q. Now, would you -- I see what you are 20 saying, somebody hit the wrong key when they were 21 keying something in, instead of a 10 it was a 22 1,000; and those -- the folks at the DC center were 23 looking for those types of issues? 24 A. That would be caught in this process as</p>	<p style="text-align: right;">Page 117</p> <p>1 BY MR. MOUGEY: 2 Q. Well, you tell me. I mean, is there -- 3 are distribution center employees the backstop to 4 the pharmacist when detecting suspicious orders? 5 MR. BENSINGER: Objection; vague. 6 BY THE WITNESS: 7 A. What do you mean by backstop? 8 BY MR. MOUGEY: 9 Q. They're the -- the tidal wall. They're 10 the support. They're the -- the department 11 responsible for backing up the pharmacist to 12 identify suspicious orders. 13 MR. BENSINGER: Objection; vague. 14 BY THE WITNESS: 15 A. I would characterize them as they're one 16 of multiple mechanisms that might detect a 17 suspicious order or possible suspicious order. 18 BY MR. MOUGEY: 19 Q. So, it sounds to me that your testimony, 20 based on your preparation today, that the 21 distribution centers are much more than simply 22 supply warehouses, so to speak? 23 A. As it relates to the shipment of 24 controlled orders, they would investigate and do</p>

<p style="text-align: right;">Page 118</p> <p>1 due diligence if that's what you're implying.</p> <p>2 Q. Yes, sir. They fill a much more</p> <p>3 important function, the distribution centers, than</p> <p>4 simply warehouses, correct?</p> <p>5 A. They were part of our detection</p> <p>6 mechanism for monitoring controlled substance</p> <p>7 orders.</p> <p>8 Q. So, the answer to my question is yes,</p> <p>9 they fill a much more important function, the</p> <p>10 distribution centers, than just warehouses,</p> <p>11 correct?</p> <p>12 MR. BENSINGER: Objection; argumentative,</p> <p>13 vague.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I'm -- I'm not sure what you really</p> <p>16 mean.</p> <p>17 BY MR. MOUGEY:</p> <p>18 Q. It sounds like what your counsel just</p> <p>19 said.</p> <p>20 So, what I'm asking, sir, is -- what I'm</p> <p>21 asking you, sir, is a simple question.</p> <p>22 The distribution centers fill a much</p> <p>23 more important function than a warehouse, correct,</p> <p>24 sir?</p>	<p style="text-align: right;">Page 120</p> <p>1 But if you turn to the first page, Bates</p> <p>2 No. 802, and for the record it's WAGMDL659802, and</p> <p>3 it's titled "Walgreens Controlled Substance</p> <p>4 Anti-Diversion and Compliance Program."</p> <p>5 Do you see that, sir?</p> <p>6 A. I do.</p> <p>7 Q. And do you see the date July 17, 2012?</p> <p>8 A. I do.</p> <p>9 Q. And below the message, "We want to work</p> <p>10 with you. We want to cooperate and avoid</p> <p>11 litigation."</p> <p>12 Do you see that, sir?</p> <p>13 A. I do.</p> <p>14 Q. And the message in the paragraph, the</p> <p>15 third paragraph is that Walgreens' policies and</p> <p>16 procedures are working.</p> <p>17 Do you see that, sir?</p> <p>18 A. I do.</p> <p>19 Q. You're aware, at this point in time,</p> <p>20 that there were several active investigations by</p> <p>21 the DEA into Walgreens' policies and procedures</p> <p>22 regarding suspicious order monitoring, correct,</p> <p>23 sir?</p> <p>24 A. I --</p>
<p style="text-align: right;">Page 119</p> <p>1 A. They are more than a warehouse.</p> <p>2 Q. And they fill an important function as</p> <p>3 opposed to a warehouse when detecting suspicious</p> <p>4 orders, correct?</p> <p>5 MR. BENSINGER: Objection; argument, asked and</p> <p>6 answered.</p> <p>7 BY THE WITNESS:</p> <p>8 A. The DC staff are an important part of</p> <p>9 our system to detect and monitor controlled</p> <p>10 substance ordering.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. I'm going to hand you what we are going</p> <p>13 to mark as Bratton 30(b)(6) 18.</p> <p>14 (WHEREUPON, a certain document was</p> <p>15 marked as Bratton 30(b)(6) Exhibit</p> <p>16 No. 18: PowerPoint, Walgreen Co.</p> <p>17 Controlled Substance Anti-Diversion</p> <p>18 and Compliance Program;</p> <p>19 WAGMDL00659801 - 00659856.)</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. Now, the first page of Bratton 30(b)(6)</p> <p>22 18 has been redacted due to privilege, and I can't</p> <p>23 tell where exactly it came from or when it was</p> <p>24 drafted.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Look at your cheat sheet if you want to.</p> <p>2 But July 2012.</p> <p>3 A. I don't recall the exact date of the</p> <p>4 order to show cause. I know some of them were</p> <p>5 around this time. So, based on that, there</p> <p>6 probably was the DEA was conducting their</p> <p>7 investigation.</p> <p>8 Q. The orders to show cause from the DEA</p> <p>9 into Walgreens both as pharmacies and as</p> <p>10 distribution centers began in 2008 and continued up</p> <p>11 to the culmination of the Memorandum of Agreement</p> <p>12 entered into in June of 2013. Correct?</p> <p>13 A. I'm not sure if there was an order to</p> <p>14 show cause in '08.</p> <p>15 Q. Why don't you, sir -- it would be</p> <p>16 important that if Walgreens is meeting with the DEA</p> <p>17 that the information given to the DEA is accurate,</p> <p>18 correct, sir?</p> <p>19 A. I would agree with that.</p> <p>20 Q. You would agree that the information</p> <p>21 that Walgreens is giving to the DEA be complete,</p> <p>22 correct, sir?</p> <p>23 A. Correct.</p> <p>24 Q. And in your preparation for your</p>

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1 testimony today, you would believe that the
2 information you were receiving to give Walgreens'
3 position on issues like the distribution centers
4 performing important functions in the suspicious
5 order monitoring process would be accurate, right?
6 A. I believe so.
7 Q. You would expect as someone sitting here
8 today on a Sunday, I'm confident that you could
9 have something better to do than sitting answering
10 questions from me, if you are being asked to come
11 give testimony today on behalf of Walgreens, that
12 you, Mr. Bratton, be given accurate information,
13 correct, sir?
14 MR. BENSINGER: Objection; argument.
15 BY THE WITNESS:
16 A. I believe so.
17 BY MR. MOUGEY:
18 Q. Yes, sir. If you would, turn to Bates
19 No. 817 titled "Corporate and Distribution Center
20 Efforts."
21 Do you see that?
22 A. I do.
23 Q. And the slide at the top says, "The
24 Distribution Center Policies and Processes," and it

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1 walks through several bullet points about what the
2 distribution center policies and processes are,
3 right?
4 A. Yes.
5 Q. And you can see here that Walgreens is
6 telling the DEA that we are responsible for
7 customer authentication policy.
8 Do you see that?
9 A. I do.
10 Q. You see here that it's handling
11 suspicious drug order policy.
12 Do you see that?
13 A. I do.
14 Q. Suspicious order monitoring process,
15 ongoing evolution from 2009 to the present, right?
16 A. Yes.
17 Q. And line limit/thresholds, correct?
18 A. Correct.
19 Q. If you would, sir, look at the second
20 bullet point down that begins with "Distribution
21 Centers."
22 A. Okay.
23 Q. And it says, Walgreens is telling the
24 DEA that "Distribution centers distribute only to

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1 Walgreens pharmacies, but they never see patients
2 and they do not have the ability to detect trends
3 in local markets related to physician practices."
4 Do you see that, sir?
5 A. I do.
6 Q. And if you go to the next bullet point,
7 "Distribution Centers are not designed to be a
8 backstop to the pharmacists who are the front
9 lines; rather, Distribution Centers are more akin
10 to supply warehouses."
11 Do you see that, sir?
12 A. I do.
13 Q. Walgreens was explaining to the DEA in
14 this document that distribution centers are more
15 akin to warehouses, correct?
16 A. I see that it says that there, yes.
17 Q. And it goes on that "The stores, on one
18 hand, and corporate headquarters, on the other
19 hand, are best equipped to ensure compliance and
20 assist in combating controlled substance abuse."
21 Do you see that, sir?
22 A. I do.
23 Q. Walgreens is telling the DEA that the
24 distribution centers are not best equipped to

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1 combat suspicious orders, correct?
2 MR. BENSINGER: Objection; characterization.
3 BY THE WITNESS:
4 A. It says that they're not best equipped,
5 yes.
6 BY MR. MOUGEY:
7 Q. And, sir, these bullets and the
8 information therein that we just reviewed appears
9 to contradict the information that you were told
10 that the distribution centers perform important
11 functions in identifying suspicious orders and
12 performing due diligence, correct, sir?
13 A. This document, the line that you've
14 pointed out specifically, says they don't have the
15 ability to detect local market trends related to
16 physician practices, and I would -- I would agree
17 with this document that that is accurate because
18 they're viewing -- they don't have insight into
19 localities.
20 And as it relates to the second -- well,
21 third point on the page, but here it's talking
22 about controlled substance abuse. And in my mind
23 that would be how patients are taking a
24 prescription, not related to suspicious order

<p style="text-align: right;">Page 126</p> <p>1 monitoring.</p> <p>2 Q. The last line, "The stores, on the one</p> <p>3 hand, and corporate headquarters, on the other, are</p> <p>4 best equipped to ensure compliance and assist in</p> <p>5 combating controlled substance abuse."</p> <p>6 Do you see that line?</p> <p>7 A. I do.</p> <p>8 Q. Do you agree with that line, that</p> <p>9 sentence in this presentation that Walgreens was</p> <p>10 providing to the DEA?</p> <p>11 A. I do agree.</p> <p>12 Q. And, sir, do you agree with this --</p> <p>13 whoever put this presentation together from</p> <p>14 Walgreens and presented to the DEA, that</p> <p>15 distribution centers are more akin to supply</p> <p>16 warehouses?</p> <p>17 A. As it relates to a clinical judgment</p> <p>18 about abuse, yes.</p> <p>19 Q. Do you see the word "clinical judgment</p> <p>20 about abuse" anywhere in this document, in this</p> <p>21 page?</p> <p>22 A. Not on this page.</p> <p>23 Q. What it's referring to, sir, is ensuring</p> <p>24 compliance.</p>	<p style="text-align: right;">Page 128</p> <p>1 What I asked you was are distribution</p> <p>2 centers an important role. I didn't ask you if</p> <p>3 they were a component. Do you see the difference?</p> <p>4 Are they an important role in fulfilling</p> <p>5 Walgreens' responsibilities under the Controlled</p> <p>6 Substance Act as a distributor in identifying</p> <p>7 suspicious orders?</p> <p>8 A. Yes.</p> <p>9 Q. Are or is Walgreens' distribution</p> <p>10 centers an important role or fill an important role</p> <p>11 in performing due diligence on those suspicious</p> <p>12 orders?</p> <p>13 MR. BENSINGER: Objection; asked and answered.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Yes.</p> <p>16 MR. BENSINGER: We have been going for about</p> <p>17 an hour and ten minutes. Is it convenient for us</p> <p>18 to take a break now, Mr. Mougey?</p> <p>19 MR. MOUGEY: Whenever you'd like, Peter. If</p> <p>20 you need a break now, be more than happy to take</p> <p>21 one.</p> <p>22 MR. BENSINGER: Let's take a short break.</p> <p>23 THE VIDEOGRAPHER: We are off the record at</p> <p>24 11:34 a.m.</p>
<p style="text-align: right;">Page 127</p> <p>1 And, sir, you would agree with me that</p> <p>2 Walgreens is responsible as a distributor for</p> <p>3 ensuring compliance with the U.S. Code and the regs</p> <p>4 promulgated thereunder to assist in combating</p> <p>5 controlled substance abuse, correct?</p> <p>6 A. I -- Walgreens, we always are seeking to</p> <p>7 be compliant and meet the requirements of the DEA.</p> <p>8 Whether or not that deals specifically with abuse</p> <p>9 or diversion, abuse specifically, I'm not sure if</p> <p>10 that's in the reg or not.</p> <p>11 But I -- I'm reading this document as in</p> <p>12 the greater context that in the previous pages</p> <p>13 where they're describing dispensing efforts in</p> <p>14 Florida, that this is related to dispensing that</p> <p>15 they're not a backstop but...</p> <p>16 Q. Are distribution centers an important</p> <p>17 role in fulfilling Walgreens' responsibilities</p> <p>18 under the Controlled Substance Act as a distributor</p> <p>19 in identifying suspicious orders?</p> <p>20 A. They are a component in that system.</p> <p>21 Q. I didn't ask you if it was a component,</p> <p>22 sir. I asked you was -- what I asked you was --</p> <p>23 and I need you to listen to my questions clearly</p> <p>24 and please answer the question that I asked. Okay?</p>	<p style="text-align: right;">Page 129</p> <p>1 (WHEREUPON, a recess was had</p> <p>2 from 11:34 to 11:53 a.m.)</p> <p>3 THE VIDEOGRAPHER: We are back on the record</p> <p>4 at 11:53 a.m.</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. Before the break, I asked you if you</p> <p>7 would agree with me that Walgreens as a distributor</p> <p>8 is responsible for ensuring compliance with the</p> <p>9 U.S. Code and the regs promulgated thereunder to</p> <p>10 assist in combating controlled substance abuse,</p> <p>11 correct?</p> <p>12 MR. BENSINGER: Objection. Record speaks for</p> <p>13 itself.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Again, I go back to I'm not sure if the</p> <p>16 reg specifically addresses abuse or diversion.</p> <p>17 However, we can always try to comply with the</p> <p>18 relevant regulations and requirements.</p> <p>19 BY MR. MOUGEY:</p> <p>20 Q. What I'm asking you is a little bit</p> <p>21 different, sir. What I'm not -- what I'm asking</p> <p>22 you is whether you strive to be compliant.</p> <p>23 What I'm asking you is, does Walgreens</p> <p>24 agree with me that it is responsible as a</p>

<p style="text-align: right;">Page 130</p> <p>1 distributor for ensuring compliance that it create 2 a system to identify suspicious orders and to 3 ensure those suspicious orders are not shipped to 4 the pharmacies? 5 MR. BENSINGER: Objection; scope, calls for a 6 legal conclusion. 7 BY THE WITNESS: 8 A. Based on my understanding, we have a 9 requirement to monitor and report suspicious orders 10 to the DEA. 11 BY MR. MOUGEY: 12 Q. And when you say "we," Walgreens as a 13 distributor plays a key role in developing a system 14 designed to identify suspicious orders, perform due 15 diligence on those orders and prevent diversion, 16 correct? 17 MR. BENSINGER: Same objection; scope, legal 18 conclusion. 19 BY THE WITNESS: 20 A. I -- I'm sorry. Can you restate the 21 question. 22 BY MR. MOUGEY: 23 Q. Sure. Walgreens as a distributor plays 24 a key role in developing a system designed to</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Correct. 2 MR. BENSINGER: I object to this argument as 3 beyond the scope based upon the order limiting the 4 scope of appropriate testimony in the case. 5 BY MR. MOUGEY: 6 Q. Sir, do you know what a Ven diagram is? 7 A. I do. 8 Q. So, if you and I were to come up with a 9 Ven diagram and in the middle here we have 10 Walgreens suspicious order monitoring policies -- 11 policy as a distributor. Okay. 12 All right. There is a circle in the 13 middle. I just wrote that, put it under the Elmo 14 up on the screen, "Walgreens suspicious order 15 monitoring policy as a distributor," right? 16 A. Yes. 17 Q. In order to fill that role, to prevent 18 diversion, it uses information that it receives as 19 a dispenser, correct, sir? 20 MR. BENSINGER: Objection; vague. 21 BY THE WITNESS: 22 A. We use sales of prescriptions in our 23 suspicious order monitoring systems. 24 BY MR. MOUGEY:</p>
<p style="text-align: right;">Page 131</p> <p>1 identify suspicious orders, perform due diligence 2 on those orders and prevent diversion, correct, 3 sir? 4 A. My understanding is we are tasked with 5 preventing diversion. Part of the regulations 6 stipulate development of systems to assist in 7 preventing diversion and the shipment of suspicious 8 orders. 9 Q. So, the answer to my question is yes, 10 sir, that Walgreens as a distributor plays a key 11 role in developing a system designed to identify 12 suspicious orders, perform due diligence on those 13 orders and prevent diversion, correct, sir? 14 MR. BENSINGER: Asked and answered. 15 BY THE WITNESS: 16 A. I'm unsure as to the legal requirements, 17 but I believe that, as I said, we work to comply 18 with the relevant regulations. 19 BY MR. MOUGEY: 20 Q. Well, unless you have an understanding 21 of what the regulations are, it's very difficult to 22 ensure compliance, correct? 23 MR. BENSINGER: Objection. 24 BY THE WITNESS:</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Yes, sir. And information pulled from 2 the pharmacy is used to prevent diversion, correct? 3 A. It's part of our overall system, yes. 4 Q. Now, if we have another circle, circle 5 to the left is "Distributor." 6 Do you see that? 7 A. I do. 8 Q. Circle to the right is "Dispenser." 9 Correct? 10 A. Correct. 11 Q. And Walgreens is charged and responsible 12 for creating a system designed to identify 13 suspicious orders, correct? 14 MR. BENSINGER: Objection. Same objection. I 15 here refer to Special Master order dated 8/31/18 16 concerning -- 9/3/18 concerning interpretations, 17 agreement or disagreement. 18 SPECIAL MASTER COHEN: Overruled. 19 BY MR. MOUGEY: 20 Q. I'm simply asking, sir, is Walgreens' 21 role to prevent diversion through identification of 22 suspicious orders and due diligence, Walgreens 23 relies on information from the dispensing side, 24 correct?</p>

<p style="text-align: right;">Page 134</p> <p>1 A. We use sales data to help drive those 2 decisions in the DC. 3 Q. And that's not the only data that 4 Walgreens use to prevent diversion through its 5 suspicious order monitoring policies, correct? 6 A. It's not the only data, correct. 7 Q. Yes, sir. And the data pulls that 8 Walgreens uses to implement its day-to-day duties 9 to identify suspicious orders can change over time, 10 correct? 11 A. Our methods have changed over time, yes. 12 Q. For example, you're familiar with the 13 Pharmaceutical Integrity Department, correct? 14 A. Correct. 15 Q. And Pharmaceutical Integrity Department 16 is charged with creating and implementing 17 Walgreens' suspicious order monitoring policies, 18 correct? 19 A. Correct. 20 Q. Pharmaceutical Integrity on multiple 21 occasions has pulled data from Walgreens, the 22 dispenser, to identify high-risk prescribers, 23 correct? 24 A. Correct.</p>	<p style="text-align: right;">Page 136</p> <p>1 marked Bratton 30(b)(6) Exhibit 2 No. 19: Ven diagram prepared by 3 Mr. Mougey at deposition.) 4 BY MR. MOUGEY: 5 Q. Keep 17 handy. We are going to come 6 back to that. And let's go back to the chart when 7 we went down this rabbit hole, and I asked you, I 8 believe, before we started, if this chart on 9 Bratton 17 is an accurate depiction of Walgreens' 10 suspicious order monitoring decision-making process 11 in the due diligence? 12 MR. BENSINGER: Asked and answered. 13 BY THE WITNESS: 14 A. I would characterize it as incomplete, 15 but... 16 BY MR. MOUGEY: 17 Q. What about it is incomplete? 18 A. Again, I don't think it accurately -- if 19 this is a flowchart designed to depict the process, 20 this is a very generalized and simplified version 21 I think that doesn't accurately detail all the 22 steps in the order in which they occur. 23 Q. All right. So, we've gone through one 24 step so far, the distribution center SAIL</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. And that's just one example, along with 2 the sales data, that Walgreens uses to implement 3 its responsibilities to identify potential 4 suspicious orders, correct? 5 A. The prescriber data was not used to 6 identify potential suspicious orders. 7 Q. It was used to identify potential areas 8 of diversion linked to high-risk prescribers, 9 correct? 10 MR. BENSINGER: Objection. 11 BY THE WITNESS: 12 A. That data was used to assess prescribers 13 and their prescription habits and inform our 14 dispensing practices at times. 15 BY MR. MOUGEY: 16 Q. You would agree with me, sir, that 17 Walgreens, in its responsibility to prevent 18 diversion, pulls data and information from both the 19 dispenser side and the distributor side, correct, 20 sir? 21 A. Yes. 22 MR. MOUGEY: I'm going to mark this beautiful 23 depiction Bratton 30(b)(6) 19. 24 (WHEREUPON, a certain document was</p>	<p style="text-align: right;">Page 137</p> <p>1 coordinator, excessive quantity query, correct? 2 A. Correct. 3 Q. So, do you believe that Bratton 17 is an 4 accurate depiction of the process you described 5 through the excessive quantity query process? 6 A. The challenge I have with this document 7 is that the ship order would be released to be 8 picked. There then could be additional scrutiny of 9 that order after it was released. 10 Q. All right. I have written over here in 11 handwriting on 17 with the "pickers," and that's 12 kind of the fat finger report, if somebody hit a 13 couple extra zeros or something along those lines, 14 right? 15 A. Could be for a variety of reasons. 16 Q. But that's how you described it earlier, 17 correct? It was an abnormal order that maybe had a 18 couple of extra zeros on the end that warranted 19 further inquiry, correct? 20 A. That's one type of order that they would 21 scrutinize. 22 Q. What other type of order would the 23 pickers scrutinize? 24 A. If it's an unusually -- an unusual</p>

<p style="text-align: right;">Page 138</p> <p>1 quantity or size, they may ask why it's being 2 placed as it seems un -- inconsistent with the 3 orders they normally pick for that item. 4 Q. And I apologize if I've already asked 5 you this, but have you been able to identify any 6 written training materials for the pickers and what 7 they used for criteria to identify unusual quantity 8 or size when filling orders? 9 A. Not at this time, no. 10 Q. Are you able to find any manual, 11 policies or procedures that the pickers use to 12 identify any suspicious or abnormal orders? 13 MR. BENSINGER: Asked and answered. 14 BY THE WITNESS: 15 A. We have not been able to find a written 16 document, no. 17 BY MR. MOUGEY: 18 Q. And who told you about what the, 19 quote-unquote, "process" was for the pickers to 20 identify abnormal orders? 21 A. So, the process described was described 22 to me by the DC staff that we interviewed. 23 Q. And who specifically from the DC staff 24 told you about what the pickers' role was?</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Deb had a lot. Deb had definitive 2 firsthand experience with the process. I can't 3 recall the level of detail the others provided at 4 this time. 5 Q. Do you recall what Deb's title is? 6 A. I do not. 7 Q. You don't recall what her title is? 8 A. I believe it was the -- she was the C-II 9 function manager, but I can't recall. 10 Q. A C-II function manager. Did she 11 work -- did Ms. Bish work at the distribution -- 12 did she work at one of the distribution centers? 13 A. Yes. 14 Q. Which one? 15 A. Perrysburg I believe. 16 Q. That was one of the ones that Walgreens 17 shut down? 18 A. We no longer -- well, the DC is still 19 there. We no longer ship controlled substances out 20 of. 21 Q. And that was the reason for Walgreens 22 making the decision not to distribute controlled 23 substances II through V out of the -- I'm sorry -- 24 II and III out of Perrysburg was what?</p>
<p style="text-align: right;">Page 139</p> <p>1 A. I know specifically that Deb Bish and I 2 discussed it. I can't recall if I also discussed 3 it with, or to what detail, Justin and Jen Diebert 4 or Justin Joseph and Jen Diebert and Steve Kneller. 5 Q. Let me make sure I am following you, 6 then. So, here I'm back to this -- your list here 7 of "List of Walgreens Employees Interviewed." Who 8 told you about the pickers policy? 9 A. Deb Bish explicitly told me details 10 about how that was enacted including her own 11 personal experience. 12 Q. All right. 13 A. I believe there was also mention by Jen, 14 Justin and Steve. 15 Q. Jen Diebert? 16 A. Correct. 17 Q. I'm going to put question marks because 18 you're not sure. Jen, Justin and Steve, is that 19 what you said? 20 A. Correct. 21 Q. But you're not sure whether they had any 22 information about the pickers in their policies and 23 procedures at all. All you can really remember is 24 that Deb had something to say about it?</p>	<p style="text-align: right;">Page 141</p> <p>1 A. My understanding at this time is the 2 concern about disruption to the business as a 3 result of ongoing DEA matters. We transitioned 4 dispensing -- or distribution to ABC. 5 Q. Walgreens was concerned based on its 6 communications with the DEA that Perrysburg might 7 get shut down, correct? 8 A. There was concern about uncertainty and 9 so in order to protect the business, we moved to 10 another distributor. 11 Q. All right. So let's go back to my 12 30,000 chart, foot chart, with all of the processes 13 and procedures in place at Walgreens to identify 14 suspicious orders. 15 So, we're at the excessive quantity 16 overview from '06 to the current time. 17 A. Um-hmm. 18 Q. What is the next kind of 30,000-foot 19 view description that you can explain to me and 20 this jury about what Walgreens policies and 21 procedures it had in place to detect suspicious 22 orders? 23 A. So -- 24 MR. BENSINGER: Objection to the</p>

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1 characterization of the exhibit. You can answer.
2 BY THE WITNESS:
3 A. The next thing that comes to mind is,
4 and we have touched on it, would be the pickers.
5 BY MR. MOUGEY:
6 Q. What time period does the pickers
7 encompass?
8 A. Until we stopped distributing controls
9 from the facility.
10 Q. Okay. So, and they're looking for
11 abnormal orders. Is that fair enough?
12 A. Correct.
13 Q. And if they found an abnormal order,
14 would that be considered suspicious?
15 A. Possible suspicious order.
16 Q. Okay. So, I will put "yes" in the next
17 column.
18 And was there due diligence performed on
19 what the pickers identified?
20 A. Based on the interviews that I
21 conducted, yes.
22 Q. And I think we've already established
23 that there is no policy or procedures in writing,
24 right?

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1 A. Correct. Not that we've been able to
2 find.
3 Q. And that the "Policies and Procedures
4 Verbally," the answer, like the previous, is yes
5 and that was to call the pharmacy?
6 A. Correct.
7 Q. And I apologize if you've already
8 answered this. But the next column, is there any
9 due diligence, is there any evidence of the pickers
10 calling the pharmacy in the way of notes or
11 database entries or anything?
12 A. Just the interview conversations that I
13 had with -- with DC staff. No written documents
14 that we've been able to find.
15 Q. Again, I apologize and I'm being a
16 little specific. But when you say "no written
17 documents," I want to make sure we're saying the
18 same thing.
19 No entries in databases, no entries in
20 journals, no electronic, there is no evidence at
21 all other than your interviews that there was due
22 diligence performed by the pickers, correct?
23 A. Not that we can directly link to the
24 pickers.

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1 Q. Okay. So, now we've got the excessive
2 quantity overview and we've got the pickers.
3 What's the next -- and the pickers were
4 in place, I'm sorry, from '06 to?
5 A. Till we ceased distribution at the
6 particular DC. So, it depends on which DC you're
7 referring to.
8 Q. Let's just call it '13/'14. Is that
9 fair?
10 A. Fair.
11 Q. I'm going to do the same for the
12 excessive quantity overview or did that continue
13 after even for dispensing?
14 A. They use it for non-control drugs.
15 Q. Okay. So it's still ongoing?
16 A. Yes.
17 Q. Okay. So, there is two examples. Is
18 there any -- where else should we go after that?
19 A. So, starting in -- let me just -- one
20 moment. I need to refer to my notes.
21 Q. Okay. Please do.
22 A. Going back we believe as far as 1998, we
23 had been reporting to the DEA field offices orders
24 that may be suspicious via either fax, letter or

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1 CDs at a later time.
2 Q. Let me start putting in '98 until when?
3 A. There is different iterations of this,
4 but for this one I believe it was through 2012.
5 Q. All right. And you're talking about the
6 Chemical Handler's report?
7 A. Correct.
8 Q. Manual?
9 A. Correct.
10 Q. That's going to be '98 to '12? Are you
11 comfortable with that?
12 A. Let me check. I may have an e-mail that
13 details.
14 Q. Can I help you?
15 A. Sure.
16 Q. If you look at Exhibit 14, which is the
17 manual. You tell me if that helps.
18 MR. BENSINGER: Object to the
19 characterization.
20 BY MR. MOUGEY:
21 Q. I can put it up there, Mr. Bratton, if
22 it helps a little bit. I know there is a lot. Put
23 it up on the Elmo. This is Exhibit 14.
24 "Effective calendar year 2012, the

<p style="text-align: right;">Page 146</p> <p>1 Controlled Substance Order Monitoring and 2 Prevention System prevents suspicious control drugs 3 from being shipped to the stores. In calendar year 4 2012, because of the program mentioned, suspicious 5 control drug reports are no longer generated as 6 their shipment is prevented by the system." 7 Does that help you? 8 A. Yes. 9 Q. So, beginning -- effective beginning of 10 2012, there were no more suspicious orders going to 11 the DEA. Is that accurate? 12 A. I don't think -- 13 MR. BENSINGER: Objection; mischaracterization. 14 BY THE WITNESS: 15 A. I don't think it's from the beginning of 16 2012. There was an implementation date. That's 17 what I'm trying to ascertain from the notes here. 18 BY MR. MOUGEY: 19 Q. They're handwritten notes, are they not? 20 A. No. I think there was an e-mail or a... 21 I'm having trouble finding the exact 22 document, but I believe it was the middle of 2012 23 that we ceased producing records as part of the 24 report based on the E-3 Chemical Handler's Manual.</p>	<p style="text-align: right;">Page 148</p> <p>1 reiterations of your past and present SOMS program, 2 policies and procedures is one of the things that 3 we're here today to ask about, right? And you're 4 not sure when that -- when that stopped? 5 A. I have the note here. I just need to 6 find it. 7 Q. Okay. It's hard in all those documents, 8 isn't it? 9 A. There is a number of them, yes. 10 So, I have an e-mail starting on 11 9/8/2010 saying the process to cut orders went 12 chain-wide last night. So... 13 Q. It's confusing, isn't it? 14 The cutting orders as a result of some 15 of the algorithms occurred like in 2010 like you 16 identified, right? 17 A. Yes. 18 Q. And this manual section on Exhibit 14, 19 Bates No. 27, appears to indicate that the cutting 20 the orders occurred in -- began to occur in '12, 21 correct? 22 A. It does -- it does indicate that. 23 I believe based on this "Controlled 24 Substance Ordering, Evolution of the Controlled</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Let me -- that's an important part of 2 Walgreens' responsibility is to report suspicious 3 orders to the DEA, is it not? 4 A. Yes. 5 Q. And I mean, in fact, some of the three 6 notebooks I got handed this morning, it's titled 7 "Suspicious Order Monitoring Policies"; and that 8 would encompass reports being sent to the DEA, 9 correct? 10 A. Correct. 11 Q. And part of what you were charged with 12 being able to testify today includes the reports 13 being sent to the DEA, correct? 14 A. Correct. 15 Q. And how those policies changed over 16 time, right? 17 A. Correct. 18 Q. And the DEA Chemical Handler's Manual 19 was one of the formulas that was used by Walgreens 20 to send reports to the DEA, correct? 21 A. The formula outlined in Appendix E-3 22 informed our reports, correct. 23 Q. Yes, sir, and we'll get to that in a 24 minute. But what I'm asking you is the</p>	<p style="text-align: right;">Page 149</p> <p>1 Substance Ordering Process" document that it would 2 have been in November. It says here, "Deployed 3 November 2012." 4 Q. What is the date of that document? 5 A. This document was attached to an e-mail 6 that was sent on October 11, 2012. 7 Q. Is your first page of that document 8 titled "Controlled Substance Ordering, Evolution of 9 Controlled Substance Ordering Process"? 10 A. Correct. 11 Q. And is that Bates numbered 395923? 12 A. This one is Bates No. 00667938. 13 Q. And do you have an understanding of how 14 many different versions of the "Controlled 15 Substance Ordering" document, the "Evolution of 16 Controlled Substance Ordering Process" there are? 17 A. I -- I understand there were multiple 18 versions of this document. 19 Q. Okay. But the one you have in front of 20 you is the one Bates numbered 667938? 21 A. Yes, starts with that. 22 Q. And what Bates number are you 23 referencing pointing out that Walgreens stopped 24 sending suspicious reports to the DEA because it</p>

<p style="text-align: right;">Page 150</p> <p>1 was cutting those orders?</p> <p>2 A. My understanding is that when phase 5</p> <p>3 was deployed, and this is Bates No. 667940, that</p> <p>4 when phase 5 was deployed, we discontinued the</p> <p>5 report that was based on the Appendix E-3.</p> <p>6 Q. All right. While we're pulling it so we</p> <p>7 have it, everyone has a copy in front of them, I'd</p> <p>8 like you to be looking at your version and point me</p> <p>9 to the language where it says, "We've stopped</p> <p>10 sending suspicious reports to the DEA because we</p> <p>11 are reducing the amount ordered"?</p> <p>12 A. It doesn't say that here on this page.</p> <p>13 But my understanding after talking with all the</p> <p>14 parties involved with the design is that the E-3</p> <p>15 report stopped when the new phase 5 system was</p> <p>16 deployed, at which point we switched to the new</p> <p>17 reporting system.</p> <p>18 Q. Okay. Let me hand this out just so we</p> <p>19 have it. I'm going to -- Bratton 30(b)(6) 20.</p> <p>20 (WHEREUPON, a certain document was</p> <p>21 marked as Bratton 30(b)(6) Exhibit</p> <p>22 No. 20: 10/11/12 e-mail string</p> <p>23 with attachment; WAGMDL00667936 -</p> <p>24 00667943.)</p>	<p style="text-align: right;">Page 152</p> <p>1 that the -- that Walgreens stopped sending its</p> <p>2 version of suspicious order reports to the DEA?</p> <p>3 MR. BENSINGER: Objection; mischaracterization.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I believe that's when we stopped sending</p> <p>6 the report based off of the guidance from the</p> <p>7 Chemical Handler's Manual Appendix E-3.</p> <p>8 BY MR. MOUGEY:</p> <p>9 Q. Okay. Now, while we're here, just bear</p> <p>10 with me on this document, we are going down a</p> <p>11 rabbit hole here for a second. Okay?</p> <p>12 So, as you reference, there is multiple</p> <p>13 versions of this document, correct?</p> <p>14 A. Correct.</p> <p>15 Q. I'm going to hand you another version.</p> <p>16 Okay.</p> <p>17 MR. MOUGEY: So, Alex, if we could pull</p> <p>18 P-WAG-5133.</p> <p>19 Thank you.</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. It's already in front of you, No. 8.</p> <p>22 A. Okay.</p> <p>23 Q. If you just look at the title page, same</p> <p>24 title page, "Controlled Substance Ordering," and I</p>
<p style="text-align: right;">Page 151</p> <p>1 BY MR. MOUGEY:</p> <p>2 Q. And you were referencing Page No. --</p> <p>3 Bates No. 7940, correct, sir?</p> <p>4 A. Correct.</p> <p>5 Q. And it's titled "Review of CSR History,"</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the title says, "The CSR process has</p> <p>9 evolved through five phases since its inception in</p> <p>10 2009. Each phase has expanded and improves the</p> <p>11 system's ability to identify and reduce excessive</p> <p>12 orders." Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Now, No. 5 is the number you were</p> <p>15 looking at before, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you were referencing that "Deployed</p> <p>18 in November '12," which is phase 5, "Adds a ceiling</p> <p>19 which limits the cumulative receipts of an item by</p> <p>20 a store," and on the third column over, "Automatic</p> <p>21 reductions to orders that exceed either tolerance</p> <p>22 or ceiling threshold." Correct?</p> <p>23 A. Correct.</p> <p>24 Q. Now, so you believe it was November '12</p>	<p style="text-align: right;">Page 153</p> <p>1 am comparing Bratton 8 and Bratton 20. Okay. Same</p> <p>2 title page to the report, right?</p> <p>3 A. Correct.</p> <p>4 Q. That's easy. These two, 8 and 20. Same</p> <p>5 cover page, right?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Now, how long have you been</p> <p>8 dealing with Exhibit 20? When did you find</p> <p>9 Exhibit 20?</p> <p>10 A. I think that was, we first --</p> <p>11 Q. When you first sat down to discuss with</p> <p>12 Walgreens?</p> <p>13 A. I believe it was earlier this week that</p> <p>14 we first went over this document, but I don't</p> <p>15 recall the exact day.</p> <p>16 Q. Now, let's go to 8, and 8 is what we</p> <p>17 were given by Walgreens' counsel in its combined</p> <p>18 discovery. Okay.</p> <p>19 So, what I want you to do is I want you</p> <p>20 to flip the page to the second page and you see</p> <p>21 they are both titled "Background"; and I'm</p> <p>22 comparing 8 and 20, and they both appear to be the</p> <p>23 same, correct?</p> <p>24 A. Correct.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. Now, if you -- the one given to us as</p> <p>2 part of combined discovery, 8 goes to "Phase 5</p> <p>3 Functionality."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. The one today that you're using and</p> <p>7 identified earlier this week or actually early last</p> <p>8 week has an additional slide in between, right?</p> <p>9 A. Correct.</p> <p>10 Q. Slide -- can you look through Exhibit 8</p> <p>11 that was given to us as part of combined discovery</p> <p>12 and see if you can find the "Review of CSR History"</p> <p>13 in 8.</p> <p>14 A. That slide does not appear.</p> <p>15 Q. It doesn't appear.</p> <p>16 Now, would you agree with me that Bates</p> <p>17 No. 940 titled "Review of CSR History" goes through</p> <p>18 phase 1 through 5 pointing out key distinctions,</p> <p>19 correct?</p> <p>20 A. This is from Exhibit 8?</p> <p>21 Q. From 20. From Exhibit 20, Bates</p> <p>22 No. 940, the one that you started using last week,</p> <p>23 goes through phases 1 through 5 and identifies key</p> <p>24 distinctions. Correct?</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. So, '98 to approximately 11/12 we'll</p> <p>2 call it the "Chemical Handler's Report E-3," is</p> <p>3 that right?</p> <p>4 A. Correct.</p> <p>5 Q. And the criteria was three times?</p> <p>6 A. Well, that's part of the criteria.</p> <p>7 Q. Okay. So, I'm going to start with</p> <p>8 three times. What's the other part of the</p> <p>9 criteria?</p> <p>10 A. So, this is Appendix E-3. I have a</p> <p>11 Bates number of 396010.</p> <p>12 Q. Okay.</p> <p>13 A. "This voluntary formula is for use by</p> <p>14 distributors to wholesale and retail levels. The</p> <p>15 formula calculates the quantity which, if exceeded</p> <p>16 in one month, constitutes an order which may be</p> <p>17 considered excessive or suspicious and therefore</p> <p>18 require reporting to DEA.</p> <p>19 "Add purchase quantities for the last 12</p> <p>20 months for all customers within the same</p> <p>21 distribution center and for customer type</p> <p>22 (hospital, pharmacy or other) for any List I</p> <p>23 chemicals containing item stocked by a distribution</p> <p>24 center.</p>
<p style="text-align: right;">Page 155</p> <p>1 A. Yes.</p> <p>2 Q. Were these distinctions important in</p> <p>3 identifying the differences in the phases 1, 2, 3,</p> <p>4 4, 5 being deployed from August 9 until the end of</p> <p>5 2012?</p> <p>6 A. This is helpful to understand the</p> <p>7 changes as the software went out.</p> <p>8 Q. Yes, sir.</p> <p>9 A. The background slide does call out the</p> <p>10 deployment date of November '12, but this has more</p> <p>11 detail.</p> <p>12 Q. Yes, sir. As a matter of fact, the</p> <p>13 detail about what's covered and what's not and when</p> <p>14 it was deployed is predominantly in slide 940 in</p> <p>15 Exhibit 20, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So, we started going down this path</p> <p>18 trying to figure out when the Chemical Handler's</p> <p>19 E-3, those suspicious reports we think were no</p> <p>20 longer being sent to the DEA, and we think that</p> <p>21 is --</p> <p>22 A. November of 2012.</p> <p>23 Q. -- November of '12, correct?</p> <p>24 A. Correct, approximately.</p>	<p style="text-align: right;">Page 157</p> <p>1 "Add customer months for every record</p> <p>2 used in the above total. (Months within the last</p> <p>3 12 that the customer purchases of the item that</p> <p>4 were not zero).</p> <p>5 "Divide the total purchases by the total</p> <p>6 customer months.</p> <p>7 "4." -- that's 3.</p> <p>8 "4. Then multiply the factor below to</p> <p>9 give a maximum amount that the customer can order</p> <p>10 per month before showing up on the suspicious order</p> <p>11 report.</p> <p>12 "Note: Factor equals 3 for C-II and</p> <p>13 C-III controlled substances containing List I</p> <p>14 chemicals and 8 for C-III through IV and V</p> <p>15 controlled substances and non-controlled OTC</p> <p>16 products containing List 1" --</p> <p>17 (Clarification requested by the</p> <p>18 reporter.)</p> <p>19 MR. BENSINGER: You have to talk a little</p> <p>20 slower and louder for the benefit of our court</p> <p>21 reporter, if you would.</p> <p>22 THE WITNESS: My apologies.</p> <p>23 BY THE WITNESS:</p> <p>24 A. -- "chemicals.</p>

<p style="text-align: right;">Page 158</p> <p>1 "Item 5. At the end of each month, a 2 report will be transmitted to the DEA (separate 3 reports for List I chemicals and Schedule II 4 through V controlled substances) of all purchases 5 of List I chemicals or C-II through V controlled 6 substances and List I containing OTC items by any 7 customer whose purchase quantities exceed the 8 parameters (above) any two consecutive months or in 9 three of any of the following six-month period. 10 "Using a computer to manage and report 11 on high-volume transaction business activities with 12 extremely short order cycle times (receipt to 13 delivery) is the only viable and cost-effective 14 methodology for the reporting of orders which may 15 be considered excessive or suspicious." 16 Q. Which Bates No. are you referencing in 17 the version you have? 18 A. 396010. 19 Q. So, I have written down Bates 20 No. 396010, correct? 21 A. Correct. 22 Q. So, "'98 to 11/12, Chemical Handler's 23 Report, List 3." 24 And, now, when that report was</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Okay. And were there -- was there ever 2 due diligence performed on the orders that were 3 flagged as part of the Chemical Handler's report? 4 A. So, it's my understanding based on 5 discussions with folks from our inventory team and 6 loss prevention, they would look at a retrospective 7 analysis of a sample of these orders and review 8 them for appropriateness. 9 Q. Okay. But, again, that's retrospective 10 analysis. Can you point me to any written policy 11 or procedures that give guidance to Walgreens 12 employees about -- about how to review that report? 13 A. As this was a process that was managed 14 by a small group of people, I don't think there is 15 a written policy on how to review the report, no. 16 Q. Okay. And when you say it's reviewed by 17 a small group of people, which small group of 18 people? 19 A. So, my understanding is it was Barb 20 Martin and Marcy Ranick reviewed these reports; and 21 there may have been other people in LP, loss 22 prevention, but we weren't able to establish who 23 they were. 24 Q. Okay. So, and Barb Martin and -- what</p>
<p style="text-align: right;">Page 159</p> <p>1 generated, were those orders shipped before due 2 diligence was performed? 3 A. Being that this is a list of possible 4 suspicious orders, they could have shipped before 5 this order -- this report was generated. 6 Q. Okay. So, I'm still back on my chart, 7 "Possibility of suspicious orders, yes. Due 8 diligence, yes, yes." 9 And for the third column, also before 10 they were shipped, yes or no? 11 A. No. 12 Q. No. 13 A. Well, not as part of this report. 14 However, they may have been subject to other due 15 diligence. 16 Q. But we're talking specifically about 17 this report, meaning they might have been in the 18 excessive quantity query report, correct? 19 A. Correct. 20 Q. Okay. But independent, orders that were 21 flagged as a result of the Chemical Handler's 22 report, there was no due diligence performed on 23 those orders before they were shipped, correct? 24 A. Not as a result of the E-3 report, no.</p>	<p style="text-align: right;">Page 161</p> <p>1 was the other name? 2 A. Marcy Ranick. 3 Q. And Marcy Ranick. Were they the ones 4 responsible, then, for performing any due diligence 5 on those reports? 6 A. They would investigate the sample of the 7 orders in the report. 8 Q. Right. So, the answer to my question is 9 yes, they were the ones that were responsible, 10 right? 11 And Marcy Ranick is R-e-n-n-i-c? 12 A. I believe it's R-n-i-c-k but -- 13 Q. R-n-i-c-k? 14 A. Yeah. I don't know. 15 Q. Okay. Fair enough. 16 So, no, there was no due diligence 17 before it was shipped but there was a I'm going to 18 write retrospective that Barb Martin and Mary 19 Ranick -- 20 A. Marcy. 21 Q. Marcy. I'm sorry. Can't read my 22 writing. 23 -- Marcy Ranick performed, correct? 24 A. Correct.</p>

<p style="text-align: right;">Page 162</p> <p>1 MR. BENSINGER: Objection; incomplete 2 characterization. 3 BY MR. MOUGEY: 4 Q. And, again, there is no written policy 5 or procedures, correct? 6 A. Not that I'm aware of, no. 7 Q. And the -- whatever policy and procedure 8 there was, you received it verbally, correct? 9 A. Correct. 10 Q. And I'm assuming that's from Barb 11 Martin? 12 A. I discussed it with Barb, yes. 13 Q. Anybody else? 14 A. Unfortunately, Marcy was -- is no longer 15 with the company and we weren't able -- we tried to 16 contact her, but we were unable to do so. 17 Q. So, I'm going to write under "Policies 18 and Procedures," Barb Martin was the one that told 19 you what those were? 20 A. Correct. 21 Q. And do you have any evidence whatsoever 22 of any due diligence performed as a result of the 23 Chemical Handler's memo? 24 A. There are e-mails in which Barb is</p>	<p style="text-align: right;">Page 164</p> <p>1 point me over the periods of '98 to 11 of 2012 2 running that Chemical Handler's report two or three 3 or four e-mails? 4 A. Yes. 5 Q. Okay. So, I'm just going to write 6 down -- 7 A. Well, and Barb's -- Barb's, interviews 8 with Barb Martin. 9 Q. So, two to I'll say five e-mails. How 10 does that sound? And Barb interview. How's that? 11 Is that fair? 12 A. Correct. 13 Q. Okay. Do you have any idea how many 14 suspicious orders were identified in those Chemical 15 Handler's reports? 16 A. I believe it was 5,500 approximately 17 something. 18 Q. The entire time? 19 A. Oh. I believe from 2006 to '12 it was 20 5,500. I don't know how many for the entirety of 21 that process and I believe that number is only for 22 Ohio. 23 Q. Yes. So, 5,500 only for Ohio from 2006 24 until November of 2012. So, it would be -- do you</p>
<p style="text-align: right;">Page 163</p> <p>1 discussing orders that were included in the report. 2 Q. Do you have those identified? 3 A. I'm not sure if I have them in my 4 binder, but I do -- I recall looking at them I 5 believe. 6 Q. You don't have them in your binder, but 7 you recall looking at them? 8 A. I'm not sure if they're in the binder. 9 Q. Okay. But sitting here today in your 10 preparation, you can't point us to anything 11 specific in writing evidencing due diligence 12 performed by anyone at Walgreens as a result of the 13 reports run from the Chemical Handler's report, 14 correct? 15 A. I'm not sure. If you could give me one 16 moment. 17 So, there was an e-mail from Marcy 18 Ranick to Daniel Coughlin, Bates No. 660331, in 19 which Marcy was comparing her review of the 3X 20 Mobius reports to the new system when it was in 21 testing. 22 Q. Can I make this a little easier? 23 A. Sure. 24 Q. Is the due diligence you're going to</p>	<p style="text-align: right;">Page 165</p> <p>1 know, just generally speaking, how many excessive 2 orders were identified in that report nationwide 3 from '06 to '12? 4 A. I do not. 5 Q. Over 100,000? 6 A. Could be possible, yeah. 7 Q. And, so, here we are today and Walgreens 8 has no written policies about what to do when an 9 order appears on that report and only three to five 10 pieces of paper in e-mail saying that they 11 performed any due diligence on those. Is that a 12 fair statement? 13 A. My understanding is that we were 14 reporting those based off of the -- the 15 recommendation of the DEA and the E-3 saying only a 16 computer system can accomplish this. 17 Q. But that really wasn't the question I 18 asked you. 19 The question I asked you was: These 20 reports being run, at least from '06 to the late 21 '12, could be in excess of 100,000 excess reports, 22 and we can -- Walgreens can point to three to four 23 e-mails documenting due diligence over that time. 24 Correct?</p>

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1 A. I believe so.

2 Q. There is nothing else in writing

3 anywhere evidencing any due diligence on those

4 Chemical Handler Manual suspicious reports being

5 generated, correct?

6 A. Not that I'm aware of at this time.

7 Q. So, if you would, sir, the Chemical

8 Handler's Manual I have in front of you as

9 Exhibit 6. This is one of the documents identified

10 in response to combined discovery 2. Let me know

11 when you got it.

12 A. Got it.

13 Q. I want you to go to Bates No. 67. It's

14 the third page in titled "Message From the

15 Administrator."

16 A. Okay.

17 Q. The first paragraph indicates, "The Drug

18 Enforcement Administration is pleased to provide

19 the Chemical Handler's Manual to assist you in

20 understanding the provisions of the chemical

21 control laws and their implementing regulations."

22 Do you see that?

23 A. I do.

24 Q. Did I read that right?

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1 A. Yes.

2 Q. All right. And it goes on, "These laws,

3 including the Chemical Diversion and Trafficking

4 Act of 1988, the Domestic Chemical Diversion

5 Control Act of 1993, the Comprehensive

6 Methamphetamine Control Act of 1996, and the

7 Methamphetamine Anti-Proliferation Act amend the

8 Controlled Substances Act of 1970, the CSA."

9 Do you see that, sir?

10 A. I do.

11 Q. All right. Now, as we go through this

12 document, let's go to Bates No. 71. "Origins of

13 the Laws and Regulations." Okay.

14 Now, have you read this document in its

15 entirety?

16 A. Not in its entirety, no.

17 Q. Are you familiar with this document?

18 A. Yes.

19 Q. Or just certain portions of it?

20 A. Certain portions.

21 Q. In any of the portions that you've read,

22 can you point me anywhere to the word "opiate" or

23 "opium" or any derivatives of that -- of those

24 words?

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1 A. Not that I'm aware of, no.

2 Q. Okay. So let's read here. "Origins of

3 the Laws and Regulations." Second paragraph.

4 "DEA embarked upon a broad chemical

5 control program in 1989 that was based on the

6 Chemical Diversion and Trafficking Act of 1988. At

7 that time, U.S. companies were the main source for

8 20,000 metric tons of various chemicals used

9 annually to manufacture cocaine in the Andean

10 countries of South America. Among the principal

11 chemicals used by cocaine manufacturers are

12 acetone" -- I'm not going to get that next one. Do

13 you know what it is? Can you pronounce it for me?

14 A. Methyl ethyl ketone.

15 Q. Thank you. And why don't you keep going

16 on that?

17 A. Ethyl ether, potassium permanganate,

18 hydrochloric acid, methyl isobutyl ketone and

19 sulfuric acid.

20 Q. None of those are opiates, right?

21 A. Correct.

22 Q. So, "The quantity of these chemicals

23 shipped to South America from the U.S. declined

24 greatly after the CDTA went into effect."

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1 Do you see that?

2 A. I do.

3 Q. "The CDTA was also effective in reducing

4 the supply of illicit methamphetamine." Right?

5 Now, meth -- correct, sir? Sorry. You

6 have to answer.

7 A. I see that, yes.

8 Q. Now, methamphetamine is not an opiate,

9 right?

10 A. Correct.

11 Q. So, "The number of clandestine

12 laboratories seized in the first three years

13 following the law's implementation reversed the

14 trend of the previous three decades and declined by

15 61%."

16 Okay. Now, let's go down to the last

17 paragraph.

18 Did you read this page specifically in

19 preparation for your testimony today?

20 A. I did not.

21 Q. Okay. So, but you believe that Chemical

22 Handler's Manual and E-3 with the formula you

23 provided earlier on Bates No. 396010 is applicable

24 to opiates or opium-like drugs under the Controlled

<p style="text-align: right;">Page 170</p> <p>1 Substance Act?</p> <p>2 A. Based on the specification of C-II</p> <p>3 through C-V, yes.</p> <p>4 Q. Yes, sir. And you would agree with me</p> <p>5 that there are C-II to C-Vs that are not opiates,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. So, is there anything in this document</p> <p>9 you can point me to that directly relates to</p> <p>10 opiates under C-II and C-V?</p> <p>11 A. C-II through C-V drugs includes opiates.</p> <p>12 Q. Yes, sir. But -- let's keep going.</p> <p>13 Are you familiar with List I chemicals?</p> <p>14 A. I am.</p> <p>15 Q. Okay. So, let's go down to that last</p> <p>16 paragraph.</p> <p>17 Do you see the sentence that begins with</p> <p>18 "As chemicals rendered"?</p> <p>19 A. Yes.</p> <p>20 Q. "As chemicals rendered into legitimate</p> <p>21 medicines purportedly for the commercial market,</p> <p>22 these products were exempted from the CDTA</p> <p>23 requirements. The Domestic Chemical Diversion</p> <p>24 Control Act of 1993 closed this loophole and</p>	<p style="text-align: right;">Page 172</p> <p>1 Do I get that right?</p> <p>2 A. Yes.</p> <p>3 Q. "Chemicals in List I generally are</p> <p>4 precursors and have been determined by DEA to</p> <p>5 require a greater level of control than other</p> <p>6 listed chemicals. Anthranilic acid" -- I'm going</p> <p>7 to have you rattle those off. Go ahead.</p> <p>8 A. "Ergotamine, piperidine, and drug</p> <p>9 products containing ephedrine, pseudoephedrine or</p> <p>10 phenylpropanolamine are examples of List I</p> <p>11 chemicals."</p> <p>12 Q. All right. Now, none of those are</p> <p>13 opiates, right?</p> <p>14 A. None of these are opiates, though, I'm</p> <p>15 not sure if this is an inclusive.</p> <p>16 Q. That's just mentioned that we just went</p> <p>17 through, none of those are opiates, right?</p> <p>18 A. Correct.</p> <p>19 Q. Are you familiar that those are</p> <p>20 drugs that are -- I'm sorry -- those are chemicals</p> <p>21 that are used to create methamphetamine and bind</p> <p>22 cocaine?</p> <p>23 A. I'm familiar that pseudoephedrine is a</p> <p>24 precursor for methamphetamine. I wasn't aware of</p>
<p style="text-align: right;">Page 171</p> <p>1 required DEA registration for all manufacturers,</p> <p>2 distributors, importers and exporters of List I</p> <p>3 chemicals."</p> <p>4 Okay. Are you familiar with what a</p> <p>5 List I chemical is?</p> <p>6 A. I believe it includes those previously</p> <p>7 mentioned ones.</p> <p>8 Q. Why don't we go and turn to Bates</p> <p>9 No. 977. It's page 8 of the document. And "Listed</p> <p>10 Chemical" is in the middle of the page.</p> <p>11 A. Um-hmm.</p> <p>12 Q. "Listed chemical is any List I chemical</p> <p>13 or List II chemical. A listing appears in</p> <p>14 Appendix A."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. And before we go back to</p> <p>18 Appendix A, let's look at "List I Chemical," the</p> <p>19 next paragraph.</p> <p>20 "List I chemical is a chemical that, in</p> <p>21 addition to legitimate uses, is used in</p> <p>22 manufacturing a controlled substance in violation</p> <p>23 of the CSA and is designated a List I chemical by</p> <p>24 the DEA administrator or Congress."</p>	<p style="text-align: right;">Page 173</p> <p>1 the other.</p> <p>2 Q. "List" -- it goes on. "List II chemical</p> <p>3 is a chemical, other than List I chemical, that, in</p> <p>4 addition to legitimate uses, is used in</p> <p>5 manufacturing a controlled substance in violation</p> <p>6 of the CSA and is designated a List II chemical by</p> <p>7 the DEA Administrator or Congress. Chemicals in</p> <p>8 List II are generally reagents and solvents."</p> <p>9 Right?</p> <p>10 A. Correct.</p> <p>11 Q. Now, opiates aren't generally reagents</p> <p>12 and solvents, correct?</p> <p>13 A. No.</p> <p>14 Q. So, you don't see anything here on</p> <p>15 page 8 of the listed chemical that refers to</p> <p>16 opiates or any derivative thereof, correct?</p> <p>17 A. Not that I am aware of, no.</p> <p>18 Q. All right. So, let's turn to page Bates</p> <p>19 No. 95 or page 26 of the document that's titled</p> <p>20 "Identification Codes for Listed Chemicals - List I</p> <p>21 Chemicals."</p> <p>22 A. Okay.</p> <p>23 Q. Okay. Now, the chemical is on the</p> <p>24 left-hand side of that table and without reading</p>

<p style="text-align: right;">Page 174</p> <p>1 all of them, would you please read through Bates 2 No. 95 and tell me if any of those chemicals listed 3 in this table on Bates No. 95 are opiates or 4 derivatives thereof. 5 A. Not that I'm aware of. 6 Q. These are all chemicals that are used as 7 precursors to meth, correct, sir? 8 A. I don't know if they're used for meth. 9 But they're used as reagents it appears. 10 Q. Reagents in the creation of meth, 11 correct? 12 A. Of a chemical process that based on our 13 previous page might be methamphetamines. I don't 14 know specifically. 15 Q. Let's turn to Bates No. 96, List II 16 chemicals. Please read on that table if you see 17 any opiates or any derivatives thereof on the 18 List II chemicals? 19 A. I do not. 20 Q. Now, the Bates number that you referred 21 to earlier when reading what the formula was was 22 396010, correct? And that's page 41 of the 23 document. 24 A. Yes.</p>	<p style="text-align: right;">Page 176</p> <p>1 calculates the quantity which, if exceeded in one 2 month, constitutes an order which may be considered 3 excessive or suspicious." Correct? 4 A. Correct. 5 Q. And throughout this page, the DEA in the 6 Chemical Handler's Manual references List I 7 chemicals, correct? 8 A. Correct. 9 Q. And List I chemicals, as we just went 10 through, does not contain opiates or any derivative 11 thereof, correct? 12 A. No. But it does say in Item 5, "List I 13 chemicals and/or C-II through V controlled 14 substances." 15 Q. That contain List I chemicals, correct, 16 sir? 17 So, this entire report is about List I 18 and List II chemicals yet Walgreens reviews this -- 19 includes in this report Schedule II through 20 Schedule V controlled substances that are opiate 21 derivatives? 22 A. I'm not -- I'm not seeing where it says 23 C-II through V that contain List I chemicals. It 24 says, "and List I containing OTC items."</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. I just want to make sure I have this 2 right. 3 This -- this is E-3 that you've been 4 referring to as the basis for the formula used in 5 the Chemical Handler's report, correct? 6 A. Correct. 7 Q. Now, have you ever -- have you actually 8 reviewed in preparation for today the reports 9 generated by Walgreens based on the criteria you 10 gave previously based off of Bates No. 396010? 11 A. I've reviewed a sample. 12 Q. Yes, sir. And does that sample that you 13 reviewed include all Schedule II and Schedule III 14 opiates that Walgreens distributes? 15 A. I believe it does. 16 Q. Does it include all Schedule II and 17 Schedule III opiates that Walgreens dispenses? 18 A. It might not, no. Not every -- 19 Q. I'm sorry? 20 A. Not every item that we dispense was 21 carried in our DCs. 22 Q. So, back to Bates Nos. 396010, "The 23 voluntary formula is used by distributors to 24 wholesale and retail levels. The formula</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. Sir, do you see under No. 1, "Add 2 purchase quantities for the last 12 months for all 3 customers within same distribution center and 4 customer type for any List I chemicals." 5 Do you see that? 6 A. I do. 7 Q. Under 2, "Add customer months for every 8 record used in the above total," which incorporate 9 List I chemicals from the preceding sentence, 10 correct, sir? 11 A. Correct. 12 Q. No. 3, "Divide total quantity purchases" 13 incorporates List I chemicals from No. 1, correct, 14 sir? 15 A. Yes. 16 Q. You can't divide total quantity 17 purchases by the total customer months in 3 without 18 referring back to 1, List I chemicals, correct, 19 sir? 20 A. Correct. 21 Q. And if you go to No. 4, "Then multiply 22 by the factor below." That also incorporates 23 List I chemicals into the equation, correct, sir? 24 A. Correct.</p>

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1 Q. And if you continue to 5, "At the end of
2 each month, a report will be transmitted to the DEA
3 (separate reports for List I chemicals and
4 Schedule II through V controlled substances)."
5 Correct, sir?
6 A. Correct.
7 Q. This entire document is discussing
8 List I and List II chemicals used as a precursor
9 for meth and cocaine, correct, sir?
10 A. I --
11 MR. BENSINGER: Objection; scope.
12 BY THE WITNESS:
13 A. I -- I'm not sure that that's true based
14 on the use of the "and/or" and, additionally, based
15 on guidance that we received from DEA field offices
16 that said that we should be submitting reports
17 regarding II through V substances using this
18 formula.
19 BY MR. MOUGEY:
20 Q. Oh. So, there is written guidance from
21 the DEA telling you all to use E-3 as the formula?
22 A. Yes.
23 Q. And where is that written guidance?
24 A. So, the one I'm referring to

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1 specifically from the DEA field office in Detroit
2 was -- one moment.
3 So, in the letter from 7/28/06 from
4 Dwayne Piñon to Barbara Dobric at the DEA --
5 Q. Stop you there for one second. Let me
6 go ahead and get this entered so we all have it in
7 front of us.
8 A. Sure.
9 Q. I apologize for interrupting.
10 MR. MOUGEY: It's P-WAG-5130. Mark this as
11 Bratton 30(b)(6) 21.
12 (WHEREUPON, a certain document was
13 marked as Bratton 30(b)(6) Exhibit
14 No. 21: 7/28/06 letter to Barbara
15 K. Dobric from Dwayne A. Piñon;
16 WAGMDL00387642 - 00387650.)
17 BY MR. MOUGEY:
18 Q. Before I interrupted you, you were
19 describing this as 7/28/2006, right?
20 A. Correct.
21 Q. And this is a letter to the DEA,
22 correct?
23 A. Correct.
24 Q. Not from?

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1 A. In response to a regulatory
2 investigation.
3 Q. All right. Now, go ahead and explain --
4 well, let me ask you this.
5 Is there in this exhibit -- what I asked
6 you was is there written direction from the DEA
7 advising Walgreens to use the Chemical Handler's
8 report as a formula for opiate-related controlled
9 substances.
10 A. I believe that we were responding in
11 this e-mail to Barbara Dobric based on
12 conversations that the DEA had with us. So, it
13 doesn't appear that I have a copy of what the DEA
14 said, only our replies.
15 Q. Yes, sir. So, is it fair, then, that
16 under "Chemical Handler's Report" on my kind of
17 handmade chart in an attempt to figure all this
18 out, that "Verbal and no written direction from DEA
19 to use E-3." Is that fair?
20 "Verbal and no written direction from
21 DEA to use E-3." Is that fair?
22 A. I seem to recall seeing an e-mail, but I
23 can't locate it now but maybe my recollection is --
24 is failing me here.

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1 Q. Well, I mean, this Chemical Handler's
2 report is -- was used for maybe 14, 15 years,
3 right?
4 A. Correct.
5 Q. And that is a large part of what
6 Walgreens used to fulfill its obligations to
7 identify suspicious orders under the Controlled
8 Substance Act, correct?
9 A. Correct.
10 MR. BENSINGER: Objection.
11 BY MR. MOUGEY:
12 Q. And more specifically, the Chemical
13 Handler's E-3 report is what Walgreens used to
14 fulfill its obligations to identify suspicious
15 orders regarding opiates or the derivatives
16 therefrom, correct?
17 A. Correct.
18 Q. Yet these orders, even though they were
19 identified on this report, over a period of a
20 decade continued to be shipped before due diligence
21 was performed, correct, sir?
22 MR. BENSINGER: Objection; mischaracterization.
23 BY THE WITNESS:
24 A. Again, there may have been due diligence

<p style="text-align: right;">Page 182</p> <p>1 performed at the time they were shipped. This 2 order was only -- this report was only 3 retrospective. 4 BY MR. MOUGEY: 5 Q. And this report by retrospective means 6 it was generated on a monthly basis, correct? 7 A. Correct. 8 Q. And it went -- every order that fit the 9 criteria under E-3 from around the country was sent 10 to every DEA field office around the country, 11 correct? 12 A. My understanding from speaking with the 13 loss prevention folks that were sending out these 14 reports is initially it was only sent to the field 15 office where the registrant was, so where the DC 16 was located. 17 But based on some requests from the DEA, 18 they -- they were struggling with -- that the store 19 might not be where that field office is, that the 20 registrant was but the store wasn't. 21 We then modified it to include shipments 22 from all DCs to all stores that were sent to all 23 field offices. 24 Q. So, when do you think -- first of all,</p>	<p style="text-align: right;">Page 184</p> <p>1 offices in those three areas. Is that right? 2 A. That's my understanding. 3 Q. So, it's possible that these 4 distribution centers would cover orders from 5 pharmacies over multiple states obviously, correct? 6 A. Correct. 7 Q. Thousands of stores, right? 8 A. Correct. 9 Q. So, do you sitting here today have an 10 understanding for when or what period of time 11 Walgreens was shipping -- I'm sorry -- was sending 12 reports based on the Chemical Handler's Manual, 13 List I, E-3, to field offices located near the 14 distribution centers? 15 MR. BENSINGER: Objection; mischaracterization. 16 BY THE WITNESS: 17 A. Mr. Stahmann was unable to give me 18 specific windows of time. He just recalled that 19 the process did change. 20 BY MR. MOUGEY: 21 Q. And it changed to at some uncertain 22 point in time to sending the reports generated in 23 E-3 in the Chemical Handler's Manual to where? 24 A. I believe it was all field offices for</p>
<p style="text-align: right;">Page 183</p> <p>1 who did you speak with at loss prevention that told 2 you that? 3 A. Eric Stahmann. 4 Q. Mr. Stahmann. So, Mr. Stahmann told you 5 that at a period of time, the orders from the DC 6 centers were shipped to the field offices around 7 the DC center? 8 A. That was his recollection. 9 Q. Or around the store? 10 A. Around the -- where the DC was 11 registered. 12 Q. Okay. And so we have C-II, there were, 13 through the entire period of time, 2006 to the 14 point Walgreens stopped distributing Schedule II 15 and Schedule III, there were three distribution 16 centers, Jupiter, Perrysburg and California, 17 correct? 18 A. Woodland, I believe, yes. 19 Q. Woodland, California. Do I have that 20 right? 21 A. I believe so. 22 Q. So, Walgreens at one period of time 23 would ship a report responsive to the criteria in 24 the Chemical Handler's Manual, List I, to the field</p>	<p style="text-align: right;">Page 185</p> <p>1 all DCs. 2 Q. All right. 3 MR. BENSINGER: Mr. Mougey, we have been going 4 for about an hour 25 minutes. Is it convenient to 5 take our lunch break? 6 MR. MOUGEY: Sure. Sounds good to me. Thank 7 you. 8 THE VIDEOGRAPHER: We are off the record at 9 1:14 p.m. 10 (WHEREUPON, a recess was had 11 from 1:14 to 2:00 p.m.) 12 THE VIDEOGRAPHER: We are back on the record 13 at 2:00 p.m. 14 BY MR. MOUGEY: 15 Q. Mr. Bratton, we've identified three 16 different ways that Walgreens was identifying 17 suspicious orders. 18 Let's kind of go back to the last issue 19 you and I were discussing before the break, the 20 Chemical Handler's report L-3. 21 If these reports -- I'm sorry -- these 22 orders that were flagged as a result of the E-3 23 from the Chemical Handler's report were shipped 24 without due diligence and they -- there is no</p>

<p style="text-align: right;">Page 186</p> <p>1 evidence that due diligence was reported or done -- 2 let me strike that whole thing. That was terrible. 3 Chemical Handler's report L-3, those 4 orders that appeared on or as a result of that 5 criteria on Bates No. 396010, there was not due 6 diligence on those orders unless it was caught in 7 one of the other metrics, right? 8 A. I think that's accurate. 9 Q. Okay. So, do you sitting here have an 10 understanding, "you" meaning Walgreens, have an 11 understanding of what the industry standard was 12 from 2006 to the point when Walgreens was no longer 13 distributing as the requirement to perform due 14 diligence on a flagged order prior to it being 15 shipped? 16 MR. BENSINGER: Objection; vague, scope. 17 BY THE WITNESS: 18 A. I have come to understand through 19 discussions and this preparation that there was a 20 time at which other distributors were seeing an 21 elevated enforcement posture from the DEA in which 22 they began to transition away from the E-3 type 23 report to a system of hold, research and then ship 24 or not ship.</p>	<p style="text-align: right;">Page 188</p> <p>1 BY MR. MOUGEY: 2 Q. Do you want me -- yes. Do you want me 3 to reread it for you? 4 A. Yes, please. 5 Q. Do you believe that the report generated 6 as a result of the Chemical Handler E-3 was 7 sufficient to meet Walgreens' responsibilities 8 under the Controlled Substance Act and the regs 9 promulgated thereunder? 10 A. I believe that we thought it was. 11 Q. When you say "thought it was," you 12 believe the answer is yes, that it was sufficient 13 to meet Walgreens' responsibilities under the 14 Controlled Substance Act and the regulations 15 promulgated thereunder? 16 A. Yes. 17 Q. Do you believe -- does Walgreens believe 18 that shipping orders that were flagged as a result 19 of the Chemical Handler's Manual E-3 without 20 performing due diligence complied with Walgreens' 21 responsibilities under the Controlled Substance Act 22 and the regulations promulgated thereunder? 23 A. I believe we thought it did. 24 Q. And I'm not asking if you believed if</p>
<p style="text-align: right;">Page 187</p> <p>1 BY MR. MOUGEY: 2 Q. Do you believe that the report generated 3 as a result of the Chemical Handler E-3 was 4 sufficient to meet Walgreens' responsibilities 5 under the Controlled Substance Act and the regs 6 promulgated thereunder? 7 MR. BENSINGER: I object on the ground that 8 that's beyond the scope of the required testimony 9 based upon the Special Master's ruling of 10 September 3, 2018. 11 MR. MOUGEY: Do you want me to read it again? 12 SPECIAL MASTER COHEN: I'm looking at it. 13 MR. BENSINGER: Special Master, specifically 14 I'm referring to your ruling on the Walmart letter. 15 SPECIAL MASTER COHEN: I know what I said. 16 MR. BENSINGER: Very good. 17 SPECIAL MASTER COHEN: I'm going to allow 18 that. 19 (Clarification requested by the 20 reporter.) 21 SPECIAL MASTER COHEN: I said I'm going to 22 allow that. 23 BY THE WITNESS: 24 A. I'm sorry. Should I answer?</p>	<p style="text-align: right;">Page 189</p> <p>1 you thought. What I'm asking is did it or did it 2 not, meaning shipping before due diligence an order 3 that was flagged on that report, comply with 4 obligations -- with Walgreens' obligations under 5 the Controlled Substance Act and the regulations 6 promulgated thereunder? Yes or no. 7 MR. BENSINGER: I renew my objection and note 8 the mischaracterization of the witness' prior 9 testimony. 10 SPECIAL MASTER COHEN: Overruled. 11 BY THE WITNESS: 12 A. I believe that we thought that that was 13 sufficient to meet the regulatory requirements. 14 BY MR. MOUGEY: 15 Q. Do you believe sitting here that 16 Walgreens filled its responsibilities by shipping 17 orders that were flagged on E-3, Chemical Handler's 18 Manual, without due diligence fulfilled Walgreens' 19 responsibilities under the Controlled Substance Act 20 and the regulations promulgated thereunder? 21 A. As the -- 22 MR. BENSINGER: Asked and answered. 23 BY THE WITNESS: 24 A. As I mentioned earlier, there may be due</p>

<p style="text-align: right;">Page 190</p> <p>1 diligence that was performed before it was shipped, 2 though not in coordination with the Appendix E-3 3 report, but yes. 4 BY MR. MOUGEY: 5 Q. Let me make sure I understand your -- 6 those caveats. 7 You believe that Walgreens, if it 8 shipped orders that were flagged on the formula out 9 of the Chemical Handler's report, E-3, without 10 performing any due diligence, whatever test it was, 11 there was no due diligence, did that comply with 12 Walgreens' responsibilities under the Controlled 13 Substance Act and the regs promulgated thereunder? 14 A. I can't say for certain that there was 15 no due diligence performed on those orders that 16 appeared in the E-3 report. 17 Q. I understand. And your preparation for 18 today included being able to identify what due 19 diligence, if any, occurred on specific orders, 20 correct? 21 A. Correct. 22 Q. So, what I'm asking you, sir, is other 23 than these three or four e-mails that you can point 24 to, if there was no due diligence performed on all</p>	<p style="text-align: right;">Page 192</p> <p>1 and explain to me what, if any, other reports or 2 mechanisms was Walgreens using post-2006 to 3 identify suspicious orders? 4 A. There was also line limits that were in 5 place. So, that is a process that no more than 6 a -- there is a maximum upper limit to the quantity 7 per line item that can be shipped. 8 In discussions with the inventory and DC 9 folks, they believe that line limits were in place 10 throughout this time, though until later we were 11 not able to definitively establish on what 12 products, but from their recollection they talked 13 about line limits. 14 Q. I apologize for interrupting, but help 15 me. Are line limits different than the excessive 16 quantity query? 17 A. Yes. 18 Q. Okay. And, so, when you say line 19 limits, help me understand a little bit what you're 20 talking about because -- this is out of the 21 distribution center? 22 A. Correct. 23 Q. Okay. So, start from scratch. What are 24 line limits?</p>
<p style="text-align: right;">Page 191</p> <p>1 of the orders that were identified using the 2 formula from the Chemical Handler's report, E-3, 3 did that fulfill Walgreens' responsibilities under 4 the Controlled Substance Act and the regulations 5 promulgated thereunder? 6 A. So, just to clarify. You're asking me 7 to speculate that if one of these orders had 8 shipped and we hadn't done due diligence, that 9 would not meet the requirements? 10 Q. That's right. 11 A. I would agree. 12 Q. Okay. Again, I apologize. When you say 13 you'd agree, you'd agree that that would violate 14 Walgreens' responsibilities under the Controlled 15 Substance Act and the regulations promulgated 16 thereunder by not performing due diligence, 17 correct? 18 MR. BENSINGER: Objection; calls for a legal 19 conclusion and an interpretation of the 20 regulations. 21 BY MR. MOUGEY: 22 Q. You can answer. 23 A. I would agree. 24 Q. Again, let's go back to 30,000-foot view</p>	<p style="text-align: right;">Page 193</p> <p>1 A. Line limit is, it refers to a line on 2 the order and it is the maximum quantity for a 3 particular product that that line can have the 4 quantity be. So, for example, 100 tablets of 5 alprazolam can't exceed 5 bottles on any order. 6 Q. Have you seen any reports that were 7 generated identifying orders that exceeded the line 8 limits? 9 A. The line limit would be a hard stop that 10 can't be exceeded. 11 Q. But have you seen any reports 12 identifying instances where that happened? 13 A. I have not. 14 Q. Have you seen any written policies or 15 procedures identifying what the criteria is for 16 when that happens? 17 A. I have not -- I have seen e-mails and 18 presentations that speak about what drugs were 19 subject to line limits, but not what the quantity 20 and the number was at the time of the line limits. 21 Q. Anything to see what the line limits 22 were, how they were created? 23 A. We don't have written documentation as 24 to what the number was on the line limit. We just</p>

<p style="text-align: right;">Page 194</p> <p>1 know that it was extant.</p> <p>2 Q. Do you know -- I'm sorry. Go ahead.</p> <p>3 A. That's it.</p> <p>4 Q. Do you know what time period the line --</p> <p>5 I'm just going to call it line limits -- the line</p> <p>6 limits policy was in place?</p> <p>7 A. The interviews in which I conducted,</p> <p>8 they thought that they had always been in place but</p> <p>9 they could not quantify what items at what time</p> <p>10 were subject to those line limits.</p> <p>11 There are some later documents in 2012 I</p> <p>12 think as part of that presentation to the DEA and</p> <p>13 another internal document shortly thereafter that</p> <p>14 details the products that were subject to line</p> <p>15 limits, but we have been unable to determine what</p> <p>16 the number was on the line limit.</p> <p>17 Q. Okay. So let me make sure, going back</p> <p>18 to our chart, I'm going to put "Line Limits" under</p> <p>19 the "Criteria." Does that make sense?</p> <p>20 A. Correct.</p> <p>21 Q. And under the "Date," I'm going to put a</p> <p>22 question mark because we're not sure, right?</p> <p>23 A. 2000 forward, but we're not sure what.</p> <p>24 Q. Did you say "2000 forward"?</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Correct.</p> <p>2 Q. So, again, not entirely sure what</p> <p>3 certain drugs were at any one point in time and</p> <p>4 what the criteria was?</p> <p>5 A. We're not able to establish what those</p> <p>6 were with documentation.</p> <p>7 Q. Okay. So, when those orders were</p> <p>8 flagged, were they suspicious?</p> <p>9 A. They could also be suspicious.</p> <p>10 Q. Okay. So, possibly suspicious like the</p> <p>11 others and the answer is yes, then?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. The due diligence, is there any</p> <p>14 mechanism to perform due diligence on an order that</p> <p>15 tripped the line limits?</p> <p>16 A. There likely -- they would likely also</p> <p>17 appear on the excessive quantity query. The</p> <p>18 difference here is that it would not allow,</p> <p>19 regardless of an override -- so, even if the DC</p> <p>20 staff investigated and found it not to be</p> <p>21 suspicious, it's still -- they could still not</p> <p>22 exceed the line limit in how much product was</p> <p>23 shipped.</p> <p>24 Q. If I put in "Due Diligence" to say a</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Yeah.</p> <p>2 Q. But not sure. I'm going to put a</p> <p>3 question mark. Is that fair?</p> <p>4 A. Fair.</p> <p>5 Q. Okay. And under the "Criteria" I'm</p> <p>6 going to put a question mark because we're not</p> <p>7 sure?</p> <p>8 A. Criteria were certain drugs, products.</p> <p>9 Q. Okay.</p> <p>10 A. What those were at what time, we don't</p> <p>11 know.</p> <p>12 Q. Okay. So, kind of like the greater than</p> <p>13 X. We know that somebody's told you that line</p> <p>14 items -- I'm sorry -- line limits were certain</p> <p>15 drugs, but we don't know which ones, right?</p> <p>16 A. We -- we have in later documents a list</p> <p>17 of chemicals, a list of products that were included</p> <p>18 in the line limits.</p> <p>19 Q. List of products?</p> <p>20 A. Um-hmm.</p> <p>21 Q. Does that include opiates?</p> <p>22 A. Correct.</p> <p>23 Q. "List of products, chemicals but later."</p> <p>24 Is that later date?</p>	<p style="text-align: right;">Page 197</p> <p>1 "Hard Stop," is that accurate?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So, I'm going to put "Hard Stop"</p> <p>4 and then "/no" on the "Due Diligence." Is that</p> <p>5 fair?</p> <p>6 A. Again, I think there would be overlap</p> <p>7 with excessive quantity query on these. Also, if</p> <p>8 the quantity exceeded the line limit, it wouldn't</p> <p>9 be shipped at all.</p> <p>10 Q. I'll just leave the "Hard Stop."</p> <p>11 So, continuing under "Policies and</p> <p>12 Procedures Written," that's no, right?</p> <p>13 A. No.</p> <p>14 Q. And then "Policy and Procedures Verbal,"</p> <p>15 it's yes but with uncertainty. Is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. And we already answered the no due</p> <p>18 diligence. I'm just going to call that a hard</p> <p>19 stop.</p> <p>20 And they weren't shipped if they</p> <p>21 exceeded the line limit, right?</p> <p>22 A. That's my understanding, yes.</p> <p>23 Q. So, what department within Walgreens was</p> <p>24 responsible for identifying what that hard stop</p>

<p style="text-align: right;">Page 198</p> <p>1 number was?</p> <p>2 A. From my understanding, it was a</p> <p>3 collaboration between the logistics, DCs, and the</p> <p>4 inventory teams.</p> <p>5 Q. Okay. So, those are three separate</p> <p>6 departments?</p> <p>7 A. Well, DCs are part of logistics.</p> <p>8 Q. What people specifically did you talk to</p> <p>9 that tried to help you understand what the line</p> <p>10 limits were?</p> <p>11 A. The DC staff, when I talked to them, I</p> <p>12 recall them talking about line limits.</p> <p>13 Q. Okay. Who is that?</p> <p>14 A. Justin Joseph and for sure. I think</p> <p>15 Steve Kneller also.</p> <p>16 Q. Okay. They are both DC staff?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 A. I believe Bamberg, Steve Bamberg,</p> <p>20 mentioned line limits as well.</p> <p>21 Q. All right.</p> <p>22 A. As Denny Murray and Barb Martin.</p> <p>23 Q. Is Steve Bamberg a DC staff?</p> <p>24 A. No. He is a systems developer, but he</p>	<p style="text-align: right;">Page 200</p> <p>1 recalls what the hard stop was, right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Do you think that that answer --</p> <p>4 and I'm sorry that you're getting put in this</p> <p>5 position, but you're only as good as the</p> <p>6 information you get, right?</p> <p>7 A. Um-hmm.</p> <p>8 Q. And you're charged sitting here today as</p> <p>9 getting up to speed, as we went through earlier,</p> <p>10 duty to prepare to talk about the different</p> <p>11 policies and procedures and formulas for suspicious</p> <p>12 order monitoring.</p> <p>13 But everything we've gone through so</p> <p>14 far, there's been virtually nothing in writing on a</p> <p>15 policy and procedure evidencing what the criteria</p> <p>16 was. Is that fair?</p> <p>17 MR. BENSINGER: Objection; argument.</p> <p>18 BY THE WITNESS:</p> <p>19 A. The -- there's been limited policies and</p> <p>20 procedures. We have interviews and then also</p> <p>21 variety of e-mails or presentations that reference</p> <p>22 the line limits. But the -- it's a limited set of</p> <p>23 information.</p> <p>24 BY MR. MOUGEY:</p>
<p style="text-align: right;">Page 199</p> <p>1 had some awareness of line limits.</p> <p>2 Q. Okay.</p> <p>3 A. He wouldn't be responsible for</p> <p>4 determining them, as best I can determine.</p> <p>5 Q. I got lost there after Steve. So, I</p> <p>6 have Justin Joseph, Steve Kneller, Steve Bamberg</p> <p>7 and who else?</p> <p>8 A. Barb Martin.</p> <p>9 Q. And Barb Martin?</p> <p>10 A. And Denny Murray.</p> <p>11 Q. Okay. Is Denny Murray a DC staff?</p> <p>12 A. He is in our Rx inventory team.</p> <p>13 Q. Okay. And one more time I'm missing</p> <p>14 one.</p> <p>15 A. Barb Martin.</p> <p>16 Q. That's right.</p> <p>17 A. Also Rx inventory.</p> <p>18 Q. But she works out of the DC offices?</p> <p>19 A. No. What I'm saying is the DCs and</p> <p>20 inventory would work together to set the line</p> <p>21 limits is what I've understood from the interviews.</p> <p>22 Q. So, you talked to four people about line</p> <p>23 limits and no one recalls any policy or procedure,</p> <p>24 no one recalls the specific line item and no one</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. What we have gone through so far, do you</p> <p>2 agree that Walgreens' suspicious order monitoring</p> <p>3 program, policies and procedures was a Byzantine</p> <p>4 maze of patchwork of pieces put together?</p> <p>5 MR. BENSINGER: Special Master, I object that</p> <p>6 this is argument and now asking for a personal</p> <p>7 opinion, not asking for a corporate designee.</p> <p>8 SPECIAL MASTER COHEN: Sustained.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. Who was in charge of, and I apologize if</p> <p>11 I already asked this, who was in charge of</p> <p>12 implementing or looking at the line limit reports</p> <p>13 on a daily basis?</p> <p>14 A. I don't know that they -- it wasn't a</p> <p>15 report so much as it was a threshold in the system</p> <p>16 that could not be exceeded. So, I don't know that</p> <p>17 anyone was reviewing the threshold on a daily</p> <p>18 basis.</p> <p>19 Q. So, if an order exceeded the threshold</p> <p>20 and wasn't filled, no one pointed you to any</p> <p>21 automation or notification for any specific</p> <p>22 individual that warranted to go take a closer look?</p> <p>23 A. No.</p> <p>24 Q. Would you agree that an order that</p>

<p style="text-align: right;">Page 202</p> <p>1 tripped the line limit was suspicious?</p> <p>2 A. It was -- it would be possibly</p> <p>3 suspicious.</p> <p>4 Q. But no one did any follow-up to see why</p> <p>5 it was tripped?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. All right. So, now after the line</p> <p>8 limits, what other policies were in place that</p> <p>9 Walgreen used to fulfill its obligations as a</p> <p>10 distributor under the Controlled Substance Act?</p> <p>11 A. Sure. Let me switch to my other binder</p> <p>12 here.</p> <p>13 So, the next, if we're going in time</p> <p>14 order, we began development and then deployment of</p> <p>15 phase 1 in 2009.</p> <p>16 Q. All right. So, 2009. And that was an</p> <p>17 algorithm written by Wayne Bancroft, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that algorithm is memorialized in a</p> <p>20 memorandum, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And that's part of your -- bear with me.</p> <p>23 I think the first manual -- I'm sorry --</p> <p>24 memo that memorialized Mr. Bancroft's memo was</p>	<p style="text-align: right;">Page 204</p> <p>1 2008, correct?</p> <p>2 A. Correct.</p> <p>3 Q. "The DEA is requiring Walgreens to</p> <p>4 monitor the orders for control substances that our</p> <p>5 stores place on our distribution centers for</p> <p>6 suspicious activity."</p> <p>7 Do you see that in the first sentence?</p> <p>8 A. I do.</p> <p>9 Q. "Suspicious orders are defined in terms</p> <p>10 of order size and order frequency. This document</p> <p>11 proposes a methodology for identifying suspicious</p> <p>12 orders in terms of order size and order frequency."</p> <p>13 Do you see that, sir?</p> <p>14 A. I do.</p> <p>15 Q. Okay. So, there wasn't anything that</p> <p>16 had changed in June of 2008 that warranted that</p> <p>17 Walgreens was now all of a sudden responsible for</p> <p>18 identifying suspicious orders, correct, sir?</p> <p>19 A. In the conversations that I had with --</p> <p>20 with the folks that I interviewed, their consensus</p> <p>21 was there was a shift in the industry and in the</p> <p>22 DEA's enforcement posture, and this led us to look</p> <p>23 for additional ways to try to get our hands around</p> <p>24 the suspicious order question.</p>
<p style="text-align: right;">Page 203</p> <p>1 2008, correct?</p> <p>2 A. I believe so, yes.</p> <p>3 MR. MOUGEY: Alex, can I get 1757.</p> <p>4 I hand you what we're going to mark as</p> <p>5 Bancroft (sic) 30(b)(6) 22.</p> <p>6 (WHEREUPON, a certain document was</p> <p>7 marked as Bratton 30(b)(6) Exhibit</p> <p>8 No. 22: 6/23/08 memo;</p> <p>9 WAGMDL00624503 - 00624509.)</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. June 23, 2008, correct, sir?</p> <p>12 A. Correct.</p> <p>13 Q. Written by Wayne Bancroft and Tracy</p> <p>14 Morris, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And to multiple other Walgreens</p> <p>17 employees, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The deliverable is "Proposal for</p> <p>20 defining 'suspicious orders' in the Walgreen</p> <p>21 distribution system," correct?</p> <p>22 A. Correct.</p> <p>23 Q. And the regarding, "DEA suspicious order</p> <p>24 reporting," as I already mentioned, dated June 23,</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. But as we go back, and we don't</p> <p>2 need this, the chart you and I have been putting</p> <p>3 together, the earliest date you and I have</p> <p>4 identified is '98.</p> <p>5 So, Walgreens was aware that it was</p> <p>6 responsible for designing a system to identify</p> <p>7 suspicious orders going all the way back to '98,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Yes, sir. So, the memo coming out in</p> <p>11 2008, there was no sea change and all of a sudden</p> <p>12 there was a new responsibility for Walgreens,</p> <p>13 correct, sir?</p> <p>14 A. I don't believe that it was a new</p> <p>15 responsibility, no.</p> <p>16 Q. So, this methodology written by</p> <p>17 Mr. Wayne Bancroft and Ms. Tracy Morris, they were</p> <p>18 charged with designing a new methodology within</p> <p>19 Walgreens to identify suspicious orders, correct,</p> <p>20 sir?</p> <p>21 A. Correct.</p> <p>22 Q. And, so, would you please explain to me</p> <p>23 what your understanding, what's -- of what that</p> <p>24 methodology was in 2008?</p>

<p style="text-align: right;">Page 206</p> <p>1 A. So, I think, you know, based off of 2 interviews and with these folks that were involved, 3 there were concerns from the DEA that the previous 4 E-3 reports were overinclusive, and we sought to 5 clarify that, but in the absence of any clarity, we 6 proceeded with this plan of action. 7 So, I'm not a Ph.D. in math like Wayne 8 is, but my understanding is that if it would look 9 back at the quantities that's normally ordered by a 10 store and it would use math to determine if that 11 quantity was irregular and if it was irregular, it 12 would -- it would flag it as potentially suspicious. 13 Q. The algorithm written by Mr. Bancroft 14 was based on linear regression? 15 A. I don't know if this one was. 16 Q. Or was it the later one? 17 A. I believe it was the later one, but, 18 again, I'm not an expert at this. 19 Q. So, Mr. -- the system that Mr. Bancroft 20 was discussing in this memorandum dated June 23, 21 2008 was designed to identify outliers outside the 22 average of a certain store, correct? 23 MR. BENSINGER: Objection; characterization. 24 BY THE WITNESS:</p>	<p style="text-align: right;">Page 208</p> <p>1 testing the system and refining the characteristics 2 of what might be identified. 3 Then in phase 2 -- 4 Q. Can I stop you there? I apologize for 5 interrupting. 6 But when you said that phase 1 was a 7 test and during that proof of concept phase we were 8 evaluating the orders to see if they would really 9 pass muster. 10 So, what I want to know is when did 11 phase 1 go into place based on the final algorithm 12 from Mr. Bancroft? 13 A. So, phase 1 was producing reports in 14 August of '09. 15 Q. Okay. Now, when I say "producing 16 reports," are you saying in a pilot concept or it 17 was implemented across all of the stores? 18 A. Pilot concept. 19 Q. Pilot concept. But what I'm looking for 20 is when was it implemented across Walgreens in its 21 final form? 22 A. Well, the phase 2, which is based off of 23 this initial algorithm, after they tested it in the 24 proof of concept, it went live in September of 2010.</p>
<p style="text-align: right;">Page 207</p> <p>1 A. I'm not sure if it was on a 2 store-by-store basis or not or if it was compared 3 to all orders of that size. 4 BY MR. MOUGEY: 5 Q. You just explain to me what you think 6 Mr. Bancroft -- and I understand that it's an 7 algorithm that is -- has a lot of Greek symbols in 8 it. 9 So, why don't you just tell me in your 10 own plain English what you think Walgreens' system 11 that it was discussing in June of 2008 to identify 12 suspicious orders? 13 A. I think it would try to identify 14 quantities or frequencies outside of a normal 15 pattern and then flag those as potentially 16 suspicious. 17 Q. And then what would happen once they 18 were flagged as potentially suspicious? 19 A. Well, phase 1 starting in '09 was a test 20 and during that proof of concept phase, we were 21 evaluating the flagged orders to see if they really 22 met muster, if you will, and were something that we 23 would consider suspicious. 24 So, for about ten months, they were</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Okay. So I'm back to our chart. I've 2 now created a second page here because we ran out 3 of room on the first one. 4 So, phase 1 was not operational across 5 Walgreens. Is that right? 6 A. No. 7 Q. I'm sorry. Am I right that it wasn't 8 operational across Walgreens? 9 A. Correct. It was only a proof of 10 concept. 11 Q. So, if I write "Phase 1 - not 12 operational," I'm going to just write "Proof of 13 concept." Is that fair? 14 A. That's fair. 15 Q. Okay. And you and I know from looking 16 at this memo that about June 2008 is when that -- I 17 won't say started because you clearly had done some 18 work, but at least memorialized. How's that? 19 Okay. So, to keep it general, should I 20 say 2008 to 2000 and -- phase 2 was implemented in 21 2010 you said, right? 22 A. Correct. 23 Q. So, can I put 2008 to 2010 under 24 phase 1?</p>

<p style="text-align: right;">Page 210</p> <p>1 A. Yes.</p> <p>2 Q. Is that fair?</p> <p>3 A. Fair.</p> <p>4 Q. Okay. So, "2008 to 2010, phase 1 - not</p> <p>5 operational, proof of concept."</p> <p>6 Does that sound right?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. So, what do you refer to or what</p> <p>9 does Walgreens refer to as Mr. Bancroft's algorithm</p> <p>10 in phase 1? What was the --</p> <p>11 A. The tolerance and frequency limits.</p> <p>12 Q. Okay. So, I'm going to under "Criteria"</p> <p>13 put "Tolerance and Frequency," and I am going to</p> <p>14 reference this Bates number, 24503, as a reference.</p> <p>15 Is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. Is this memo a good memorialization of</p> <p>18 that phase 1?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So, phase 1, 24503. I'm going to</p> <p>21 put a 6 in front of it. "624503, Tolerance and</p> <p>22 Frequency," and that was on a pilot basis, correct?</p> <p>23 A. Correct.</p> <p>24 Q. So, let's talk about the pilot stores</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. So, was it operational in the pilot</p> <p>2 stores?</p> <p>3 A. It was only collecting data, from my</p> <p>4 understanding.</p> <p>5 Q. Okay. It was a beta test. How's that?</p> <p>6 Is that fair?</p> <p>7 A. That's fair.</p> <p>8 Q. So, it wasn't implemented in those pilot</p> <p>9 stores. It was beta testing to see what the</p> <p>10 results were for accuracy and making sure</p> <p>11 everything was running smoothly?</p> <p>12 A. Correct.</p> <p>13 Q. And that continued from '08 until 2010</p> <p>14 when phase 2 was implemented, is that -- is that</p> <p>15 accurate?</p> <p>16 A. When phase -- phase 2 was deployed, yes.</p> <p>17 Q. Okay. And do you have an understanding</p> <p>18 of when phase 2 was deployed?</p> <p>19 A. September 2010.</p> <p>20 Q. September 2010?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And please explain what</p> <p>23 phase 2 is. Is it the same methodology with the</p> <p>24 tolerance and frequency that we just discussed in</p>
<p style="text-align: right;">Page 211</p> <p>1 for a minute. I get some of these mixed up a</p> <p>2 little bit. Is that Nevada, Tennessee? Tell me</p> <p>3 where the pilots were. Do you remember?</p> <p>4 A. I believe some were in Nevada. I'm</p> <p>5 not -- I don't know -- I don't recall them</p> <p>6 mentioning Tennessee.</p> <p>7 Q. Okay. And when we say "pilots," were --</p> <p>8 was the formula being run and was a report being</p> <p>9 generated that suspicious orders were -- were going</p> <p>10 to certain individuals within Walgreens?</p> <p>11 A. So, during that time, Barb Martin and</p> <p>12 Marcy Ranick would review monthly data from the --</p> <p>13 the stores, and there's some discussions that I've</p> <p>14 had with Barb and also e-mails and notes that I've</p> <p>15 seen where they would evaluate is this potentially</p> <p>16 suspicious or not and, for instance, there's</p> <p>17 examples where there is things that shouldn't have</p> <p>18 been flagged or may have -- the system was</p> <p>19 interpreting actions by the store incorrectly and</p> <p>20 so those shouldn't be included in the flagging.</p> <p>21 Q. So, Bob and -- I'm sorry.</p> <p>22 Barb Martin and Marcy Ranick were kind</p> <p>23 of looking at the reports generated as a pilot?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 213</p> <p>1 phase 1?</p> <p>2 A. So, they made some changes --</p> <p>3 Q. Okay.</p> <p>4 A. -- is what I was told and updated the</p> <p>5 way the system was functioning and then --</p> <p>6 Q. Okay.</p> <p>7 A. -- once those changes were incorporated,</p> <p>8 it was deployed in September of 2010, and at that</p> <p>9 time it would automatically reduce orders that</p> <p>10 exceeded the tolerance threshold.</p> <p>11 Q. Okay. So, "Possible Suspicious Orders"</p> <p>12 would be a yes, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, let me go back. I should</p> <p>15 have filled out the rest of these.</p> <p>16 I'm just going to put "Beta" across all</p> <p>17 these columns at the top. Is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, let me make sure I got this</p> <p>20 right.</p> <p>21 So, Mr. Bancroft's formula would run</p> <p>22 through the system across the country and if an</p> <p>23 order exceeded frequency or tolerance, the order</p> <p>24 was reduced, correct?</p>

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1 A. Correct.

2 Q. And if the order triggered frequency or

3 tolerance, was a suspicious report generated?

4 A. No.

5 Q. Okay. So, you'd agree with me that

6 triggering frequency or tolerance, that that would

7 possibly be a suspicious order, correct?

8 A. Possibly. However, it would be reduced

9 before it was ever transmitted to the DC.

10 Q. All right. So, under "Possibly

11 Suspicious Orders," I'm going to put "Yes but

12 reduced." Is that fair? Is that accurate?

13 A. Yes.

14 Q. Okay. The criteria under deployed in

15 9/10 in phase 2 was kind of the same thing I put in

16 this first column, "Some changes and updates,"

17 right?

18 A. Updated tolerance and frequency, yes.

19 Q. All right. I'm going to put "Some

20 changes/updates to phase 1."

21 Do you know what those were, what the

22 changes and updates were?

23 A. They are design documents. I'm not sure

24 if they call out specifically like in a -- like

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1 before and after kind of format. But I think they

2 detail what was implemented.

3 Q. Do you believe that there is specific

4 documents that identify what the changes and

5 updates were from phase 1 to phase 2?

6 A. There's the design docs, but you'd have

7 to compare the version 1 and version 2 design doc

8 and draw out the differences. There was also some

9 e-mails from Marcy and Barb that said, you know,

10 this shouldn't be flagged or we need a new

11 category. This is incorrectly --

12 Q. Sitting here --

13 A. -- being positioned.

14 Q. Sorry. Didn't meant to interrupt you.

15 But sitting here today you can't tell

16 this jury with specificity what the difference is

17 between phase 1 and phase 2 of Walgreens'

18 suspicious order monitoring policies, can you?

19 A. I think we would have to do a review of

20 the business requirements for each phase and then

21 produce a deliverable, yeah, that would.

22 Q. When you say "business requirements,"

23 you're referring to the internal memorandum

24 generated on an ongoing basis updating, correct?

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1 A. The -- yes, and the design documents

2 that specify what the system shall do and how that

3 will be accomplished.

4 Q. So, as part of your preparation for

5 today, no one's helped educate you on the

6 differences between phase 1 and phase 2 in kind of

7 a list of what the differences are, right?

8 A. Not at that level of specificity.

9 Q. Quite frankly, really, can you give me

10 any direction as to what the differences between

11 phase 1 and phase 2 are other than just pointing me

12 to the numerous business requirements documents

13 generated internally?

14 A. I think there were some adjustments to

15 Steve or -- excuse me -- Wayne's formula. I don't

16 fully understand how that -- those work.

17 As I said, I think they added

18 additional. So, when it was flagged, it would have

19 a sort of a disposition as to why. And they added

20 additional criteria or dispositions.

21 And then there were times when it was --

22 we looked at examples where it was the store

23 changed the order, but they may have actually

24 changed it to be less or in a way that was

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1 acceptable, but those were getting flagged because

2 it was touched at all by the store, which was not

3 appropriate based -- not an appropriate criteria to

4 mark it as suspicious, only that it was touched.

5 Q. So, sir, sitting here today with Bratton

6 Exhibit 2, the First Notice of Deposition pursuant

7 to 30(b)(6), you can't explain to the jury what

8 Walgreens' standards and metrics were as elaborated

9 in Mr. Bancroft's memo with any -- with any

10 specificity other than what you just gave, correct?

11 A. Correct.

12 Q. So, how the formula worked, what the

13 formula was, what data it pulled, those aren't --

14 that's not information you have in response to (i)

15 today?

16 A. Those are contained in the documents.

17 Q. Yes, sir. I'd have go back and kind of

18 compare all the different business requirements

19 documents and see if I can discern what the

20 differences were, correct?

21 A. Correct.

22 Q. Can you actually point me to a document

23 that says this is phase 2, this is it?

24 A. So, there's a number of documents. The

<p style="text-align: right;">Page 218</p> <p>1 first one would be the design for phase 2.</p> <p>2 Q. Before I interrupt, I just want to make</p> <p>3 sure before you keep going. What I'm looking for</p> <p>4 is a final, final document with a final algorithm.</p> <p>5 Can you -- not a series of documents with updates.</p> <p>6 Can you point me to a final document</p> <p>7 with a final algorithm formula?</p> <p>8 A. I believe that the micro design for</p> <p>9 phase 2, and that's Bates No. 492076, outlines the</p> <p>10 final formula for the system. And there is an</p> <p>11 attachment to that report that has a separate -- I</p> <p>12 thought there was.</p> <p>13 Q. What concerns me a little bit about your</p> <p>14 answer is you said "I believe." Is it? Is 492076</p> <p>15 the final version of phase 2?</p> <p>16 A. I believe so, yes. This is what they</p> <p>17 would have built and implemented.</p> <p>18 Q. Okay. You just use the word "I believe"</p> <p>19 again. Is that a caveat or are you saying that</p> <p>20 is -- that is or you're not really sure?</p> <p>21 A. The challenge with any of our IT</p> <p>22 projects is they would begin with this design doc</p> <p>23 and as they deployed the software, if there were</p> <p>24 defects or bugs that were identified as part of</p>	<p style="text-align: right;">Page 220</p> <p>1 something was changed.</p> <p>2 Q. Okay. You would agree with me, sir,</p> <p>3 that under (i), one of the questions we had today</p> <p>4 that Walgreens was to prepare you on was the</p> <p>5 metrics used to identify orders of unusual size,</p> <p>6 orders deviating substantially from a normal</p> <p>7 pattern and orders of unusual frequency, right?</p> <p>8 A. Yes.</p> <p>9 Q. And what we're discussing would fall</p> <p>10 under (i), correct?</p> <p>11 A. Correct.</p> <p>12 Q. And, so, even sitting here after now</p> <p>13 years later, months into this litigation, Walgreens</p> <p>14 isn't able to tell us what the exact algorithm was</p> <p>15 in 2009 that was deployed, correct?</p> <p>16 A. I reasonably believe, I feel, that this</p> <p>17 was what was deployed but I can't --</p> <p>18 Q. You can't say for sure?</p> <p>19 A. I can't say with 100 percent certainty.</p> <p>20 Q. Okay. Now, orders that were cut down</p> <p>21 were based on this tolerance and frequency. Were</p> <p>22 there -- was there due diligence performed on the</p> <p>23 order as it was submitted?</p> <p>24 A. Other than the previously discussed</p>
<p style="text-align: right;">Page 219</p> <p>1 the -- so, any time we go through the business</p> <p>2 requirements, functional requirements, macro</p> <p>3 design, micro design, build, test, and then pilot.</p> <p>4 Q. Right.</p> <p>5 A. As part of the pilot, it's a limited</p> <p>6 distribution smaller number of stores.</p> <p>7 Q. Get it.</p> <p>8 A. As part of that pilot, they may identify</p> <p>9 defects in the product.</p> <p>10 Q. Okay.</p> <p>11 A. I -- we were unable to determine if</p> <p>12 there were any of those documents that outlined any</p> <p>13 defects --</p> <p>14 Q. Okay.</p> <p>15 A. -- that were -- would have -- might have</p> <p>16 precipitated a change during the pilot phase.</p> <p>17 Q. So, the answer to my question is we're</p> <p>18 not really sure what the exact final formula or</p> <p>19 algorithm was that was actually deployed after the</p> <p>20 macro, micro, pilot, you know, any tweaks or</p> <p>21 changes right when it was deployed, right?</p> <p>22 A. I have no evidence that would lead me to</p> <p>23 believe it wasn't what's in the micro design, but</p> <p>24 I'm also not ruling out there is a possibility that</p>	<p style="text-align: right;">Page 221</p> <p>1 diligence, no.</p> <p>2 Q. So, there's no one at Walgreens that's</p> <p>3 receiving these reports or the results of the phase</p> <p>4 2 algorithm and performing due diligence on any of</p> <p>5 these?</p> <p>6 A. Well, the orders after they were cut</p> <p>7 would be released to the DC and the DC would --</p> <p>8 would perform their diligence, but I know that Barb</p> <p>9 and Marcy were still looking at these periodically</p> <p>10 as well.</p> <p>11 Q. The orders that were -- that triggered</p> <p>12 the formula for tolerance and frequency and were</p> <p>13 cut, were those reported to the DEA as suspicious?</p> <p>14 A. They would not have been included in</p> <p>15 the -- the Appendix 3-E report.</p> <p>16 Q. Or any report for that matter?</p> <p>17 A. Not based on the -- they might have been</p> <p>18 in there, but they weren't included based on their</p> <p>19 being flagged in this process.</p> <p>20 Q. There was no report for suspicious</p> <p>21 orders being sent to the DEA as a result of orders</p> <p>22 being cut based on tolerance and frequency, right?</p> <p>23 A. Not at this time, no.</p> <p>24 Q. Okay. So, "Possible Suspicious Order"</p>

<p style="text-align: right;">Page 222</p> <p>1 column, back to the chart, "Yes, but reduced. No 2 SOR," suspicious order reports, "to DEA," I'm going 3 to say, "based on phase 2." Is that fair? 4 A. Yes. 5 Q. And based on phase 2, order getting cut, 6 there was no due diligence on why the order 7 exceeded the tolerance and frequency either, 8 correct? 9 A. Not based only on phase 2, correct. 10 Q. Okay. So, I said below that, "No on 11 phase 2." Is that -- that's accurate, right? 12 A. Other than the other diligence, no. 13 Q. Yes, sir. So, I think it's safe to 14 assume and there is not any policies and procedures 15 written on what due diligence to perform based on 16 the orders that were cut, right? 17 A. Correct. 18 Q. So, I'm going to put "Not on due 19 diligence for orders that were cut." Is that fair? 20 A. Yes. 21 Q. Okay. 22 A. There was retrospective analysis, but 23 not -- 24 Q. Before they were shipped?</p>	<p style="text-align: right;">Page 224</p> <p>1 September '10 to May of '12 for phase 2, is that 2 right? 3 A. Correct. 4 Q. Okay. So, phase 3 is June of '12, 5 right? 6 A. Correct. 7 Q. So, do you have an understanding -- 8 actually, before we get into that, let me make sure 9 that you and I are clear on something. 10 When an order triggered the tolerance 11 and frequency under phase 2 and it was cut, let me 12 make sure you and I are saying the same thing, cut 13 meaning that the order was reduced to the amount 14 set internally by Walgreens. Is that fair? 15 A. Based on the algorithm developed by 16 Wayne. 17 Q. Okay. And, so, therefore, the order was 18 not sent from the distribution center? 19 A. It was reduced and fulfilled. 20 Q. Reduced and fulfilled. Okay. Fulfilled 21 meaning the order was reduced to the amount that 22 Walgreens said it was okay and then it was 23 fulfilled, correct? 24 A. Correct.</p>
<p style="text-align: right;">Page 223</p> <p>1 A. Correct. 2 Q. And the retrospective analysis was what? 3 A. The LP, Marcy Ranick and Barb Martin 4 would review a sample of these and review the 5 appropriateness of the orders. 6 Q. All right. So, how do you know that? 7 A. Based on discussions with them and 8 e-mails that I've seen where they discuss. 9 Q. So, no -- no written policies or 10 procedures on what that due diligence was? 11 A. No. 12 Q. Okay. So, I'm going to say "Policy and 13 Procedures on Due Diligence," I'm going to say, 14 "Nothing in writing other than e-mails and verbal 15 or interviews." Is that fair? 16 A. Correct. 17 Q. All right. So, phase 2. How long was 18 phase 2 in play? 19 A. Let me switch back to my reference 20 material here. 21 Q. Are you looking for an end to phase 2? 22 A. Yes. So, phase 3 was deployed in 23 June of 2012. 24 Q. Okay. So, I'm going to say</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. Okay. Now, phase 3. Was that process 2 still in place in phase 3? 3 A. Correct. 4 Q. Reduced and fulfilled? 5 A. Correct. 6 Q. Okay. So, how long was phase 3 in play? 7 A. Phase 3 was from June of '12 to 8 August of '12. 9 Q. And what was different between phase 2 10 and phase 3? 11 A. Further refinement of the math. 12 Q. Okay. So, what specifically? 13 A. Let me take a look. 14 So, the frequency calculation was 15 updated and they specified in this -- this is -- 16 I'm looking at the functional macro design 17 documents. Do you need a Bates? 18 Q. That would be wonderful. Thank you. 19 A. 325172. And this contains details on 20 how the frequency calculation was changed. 21 Q. All right. Are you comfortable that 22 that is 325172 is the final? 23 A. Yes. 24 Q. Okay. So, what is your understanding</p>

<p style="text-align: right;">Page 226</p> <p>1 generally about what the changes in the algorithm 2 were as elaborated on on 325172? 3 A. One moment. 4 It says here that they were including 5 vendor orders in frequency. So, previously we had 6 only considered orders from our own distribution 7 centers. 8 Q. So, included under the "Criteria," I'm 9 going to put "Included vendor orders"? 10 A. For consideration in frequency. 11 Q. Just frequency? 12 A. Correct. 13 And then they corrected an order -- an 14 issue in which an incorrectly adjusted quantity or 15 user adjusted quantity would -- it appears they 16 would appear incorrectly in the system. So, they 17 were fixing a bug. 18 Q. Okay. And the bug was regarding? 19 A. The order details. 20 Q. Okay. All right. So, under "Criteria" 21 I put, "Same as 2 but included vendor orders for 22 consideration in just frequency and fixed a bug for 23 order details." Is that right? 24 A. Correct.</p>	<p style="text-align: right;">Page 228</p> <p>1 A. Correct. 2 Q. Over these next few pages has a very 3 intricate algorithm, was designed to identify 4 orders that were outliers, correct? 5 A. Correct. 6 Q. And when it found those orders that were 7 outliers, he refers to those orders throughout his 8 memo as suspicious orders, correct? 9 A. He does. 10 Q. And, so, in June of 2008, those outlier 11 orders from the gentleman, the Ph.D. in math that 12 wrote this algorithm, said those are suspicious 13 orders, correct? 14 A. He did. However, Wayne being a smart 15 guy but is not a lawyer and I don't think this 16 represents our legal position on what these -- this 17 algorithm did. 18 Q. And the legal position is that if the 19 suspicious orders reduced, it just magically is no 20 longer suspicious? 21 MR. BENSINGER: Objection; beyond the scope, 22 calling for a legal opinion and interpretation. 23 SPECIAL MASTER COHEN: Sustained. 24 BY MR. MOUGEY:</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Okay. So, now, when an order was 2 reduced and fulfilled, I believe you called it, 3 under phase 2 and phase 3, were those orders 4 identified as suspicious and sent to the DEA? 5 A. No. 6 Q. Did Walgreens not believe that the order 7 that was reduced was a suspicious order? 8 A. I believe that we believed that since it 9 was reduced, it was no longer met the criteria for 10 being suspicious. 11 Q. So, it would just be reduced and then it 12 was no longer suspicious? 13 A. Correct. 14 Q. Oh, okay. So, the order comes in, 15 formula reduces it, and then Walgreens says it's 16 not suspicious, right? Did I get that right? 17 A. Correct. 18 Q. Okay. But if I go back to Wayne 19 Bancroft's memo, all the way back in June of 2008, 20 which is Bratton 22, the proposal was to define 21 suspicious orders, right? 22 A. Correct. 23 Q. And this entire proposal that Mr. Wayne 24 Bancroft -- and you said he has a Ph.D. in math?</p>	<p style="text-align: right;">Page 229</p> <p>1 Q. Walgreens has to understand what the 2 industry standards are when implementing its 3 algorithm, correct? 4 MR. BENSINGER: Objection; argument. 5 BY THE WITNESS: 6 A. We -- we were implementing this program 7 for monitoring. We believed we were meeting the 8 requirement via the Appendix E-3 reporting. 9 BY MR. MOUGEY: 10 Q. If Walgreens thought it was meeting the 11 requirement under E-3, it brought in Wayne to write 12 a pretty sophisticated algorithm in 2008, right? 13 A. Correct. 14 Q. So, let's go back to understanding 15 industry standards. 16 Walgreens, in order to effectively 17 implement its responsibilities as a distributor, 18 needs to understand what the industry standards are 19 for identifying suspicious order monitoring, 20 correct? 21 MR. BENSINGER: Objection; scope and again 22 calls for opinion testimony beyond the designation 23 of this corporate spokesperson. 24 SPECIAL MASTER COHEN: Overruled.</p>

<p style="text-align: right;">Page 230</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm sorry. Can you repeat the question.</p> <p>3 BY MR. MOUGEY:</p> <p>4 Q. Walgreens people have to understand what</p> <p>5 the industry standards are when implementing the</p> <p>6 suspicious order monitoring policies, correct?</p> <p>7 A. We were seeking to understand those. I</p> <p>8 believe that the challenge for us was that the</p> <p>9 other distributors could not fully elaborate on</p> <p>10 what they thought they needed to do and when we</p> <p>11 tried to seek clarity from the DEA, we did not</p> <p>12 receive additional guidance when our -- our legal</p> <p>13 team inquired with them.</p> <p>14 So, we were doing what we thought based</p> <p>15 off of feedback from other parties, things we had</p> <p>16 heard, would improve our system so that it would be</p> <p>17 more effective.</p> <p>18 Q. And when Mr. Bancroft, the Ph.D., sat</p> <p>19 down and wrote the algorithm with the input of</p> <p>20 people from Walgreens, you would expect that he</p> <p>21 went to other individuals to gather information to</p> <p>22 write the algorithm, right?</p> <p>23 MR. BENSINGER: Objection; calls for</p> <p>24 speculation, scope.</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. What department is James VanOverbake in?</p> <p>2 A. I don't know.</p> <p>3 Q. So, just the people that you know</p> <p>4 sitting here, we have IT, we have loss prevention,</p> <p>5 we have inventory management and we have</p> <p>6 legal/regulatory just on this memo, the ones that</p> <p>7 we could identify, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Mr. Bancroft took his work and brought</p> <p>10 it to multiple departments, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And based on his input and his algorithm</p> <p>13 that he drafted, he believed that he was charged</p> <p>14 with identifying orders that were suspicious,</p> <p>15 correct?</p> <p>16 MR. BENSINGER: Objection; calls for</p> <p>17 speculation.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I can't tell you what Wayne believed.</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. I'm asking what does it say right in</p> <p>22 this deliverable, "Proposal for defining</p> <p>23 'suspicious orders,'" correct, sir?</p> <p>24 A. I see that it says that, yes.</p>
<p style="text-align: right;">Page 231</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm not sure what Wayne did to -- to</p> <p>3 write, author this other than what he's told me,</p> <p>4 which is he sat down and --</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. What department is Steve Bamberg in?</p> <p>7 A. IT.</p> <p>8 Q. What department is Ed Choroski in?</p> <p>9 A. I don't know.</p> <p>10 Q. What department is Rick Gates in?</p> <p>11 A. Pharmacy operations.</p> <p>12 Q. What department is Tim Gorman in?</p> <p>13 A. I don't know.</p> <p>14 Q. What department is Scott Jonkman in?</p> <p>15 A. Loss prevention.</p> <p>16 Q. What department is Brian Leander in,</p> <p>17 please?</p> <p>18 A. I don't know.</p> <p>19 Q. What department is Barb Martin in?</p> <p>20 A. Barb Martin is in inventory.</p> <p>21 Q. What department is Dwayne Piñon in?</p> <p>22 A. Legal, regulatory, law.</p> <p>23 Q. What department is Linda Rambo in?</p> <p>24 A. I don't recall.</p>	<p style="text-align: right;">Page 233</p> <p>1 Q. And what is Walgreens' position that an</p> <p>2 order that's identified by Mr. Bancroft's algorithm</p> <p>3 that is just reduced is no longer suspicious?</p> <p>4 Where did that come from?</p> <p>5 MR. BENSINGER: Objection to characterization.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I think that was a legal interpretation</p> <p>8 by our regulatory/law team.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. And who specifically?</p> <p>11 A. I don't know.</p> <p>12 Q. So, the regulatory/law team said that an</p> <p>13 order that is flagged as a result of this algorithm</p> <p>14 and is identified by Mr. Bancroft's own language as</p> <p>15 suspicious is no longer suspicious if we reduce it</p> <p>16 and don't fill, correct?</p> <p>17 MR. BENSINGER: Mr. Bratton, I instruct you</p> <p>18 not to answer the question on the ground that as</p> <p>19 phrased it seeks to elicit attorney-client</p> <p>20 communication.</p> <p>21 BY MR. MOUGEY:</p> <p>22 Q. Sir, isn't that actually -- what I'm</p> <p>23 asking you are the details of the metric of the</p> <p>24 suspicious order monitoring system. All right.</p>

<p style="text-align: right;">Page 234</p> <p>1 So, the metric that Mr. Bancroft used 2 identified these orders as suspicious, correct, 3 sir? 4 A. Possibly suspicious. 5 Q. It doesn't say "possibly" in the 6 deliverable, does it, sir? 7 A. They're in quotes. So, I don't know 8 what that means. 9 Q. So, you read in when it's in quotes to 10 mean possibly? 11 A. It's -- it's not definitively 12 suspicious. 13 Q. Do you see the second sentence 14 underneath "Overview," "This document proposes a 15 methodology for identifying suspicious orders"? 16 A. Correct. 17 Q. That's not in quotes, right? 18 A. No. 19 Q. So, Mr. Bancroft, based on his work, 20 along with Tracy Morris, decides that an order that 21 is flagged as a result of his algorithm is 22 suspicious, correct? 23 MR. BENSINGER: Objection; calls for 24 speculation.</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. The first part of the second sentence 2 says "suspicious orders," correct? 3 A. Correct. 4 Q. The third sentence uses the language 5 "suspicious orders," correct? 6 A. Correct. 7 Q. Sir, you don't see the words in any of 8 that language "possible," "potential," "probable," 9 do you? 10 A. No. 11 Q. You don't see anywhere in this memo that 12 talks about flagging orders that may or may not be 13 suspicious down the road, correct? 14 A. Steve -- or Wayne didn't characterize it 15 that way, no. 16 Q. No, sir. Who changed Mr. Bancroft's 17 language based on his work in this memorandum that 18 an order that was flagged as a result of his 19 algorithm was no longer suspicious if it was 20 reduced? 21 A. I don't know. 22 MR. BENSINGER: Mr. Mougey. 23 MR. MOUGEY: Allow me to just finish, please, 24 sir.</p>
<p style="text-align: right;">Page 235</p> <p>1 BY THE WITNESS: 2 A. I'm sorry. Can you repeat the question. 3 BY MR. MOUGEY: 4 Q. Yes, sir. Mr. Bancroft, based on his 5 work, along with Tracy Morris, determined that an 6 order -- you know what? Let me ask the question 7 another way. 8 Mr. Bancroft and Tracy Morris' memo 9 delivered to multiple departments at Walgreens 10 determined that an order that is flagged as a 11 result of this algorithm is suspicious, correct, 12 sir? 13 A. I think what he was attempting to 14 identify here were possible suspicious orders that 15 we would, as we see later in the development of 16 this system, that we would then flag for additional 17 review. 18 Q. Sir, you see "suspicious orders" under 19 "Deliverable," correct? 20 A. Correct. 21 Q. You see in the very first sentence 22 "orders" and then "suspicious activity," correct, 23 sir? 24 A. Correct.</p>	<p style="text-align: right;">Page 237</p> <p>1 BY MR. MOUGEY: 2 Q. And, sir, you understand that as part of 3 your duty today to be prepared to testify on 4 Walgreens' positions that we are entitled to an 5 answer on the standards and metrics used to 6 identify orders of unusual size, orders deviating 7 substantially from a normal pattern and orders of 8 unusual frequency, correct, sir? 9 A. Correct. 10 Q. And, sir, you can't tell me what input 11 went into changing Mr. Bancroft's memorandum that 12 orders that were flagged as a result of his 13 algorithm were no longer suspicious, correct? 14 A. I can't -- 15 MR. BENSINGER: Objection; vague. 16 BY THE WITNESS: 17 A. I can't point to any specific 18 determination. 19 BY MR. MOUGEY: 20 Q. You don't know the answer? 21 A. No. 22 MR. BENSINGER: Mr. Mougey, should we go off 23 the record, take a short break? 24 MR. MOUGEY: Sounds good. Thank you.</p>

<p style="text-align: right;">Page 238</p> <p>1 THE VIDEOGRAPHER: We are off the record at 2 3:06 p.m. 3 (WHEREUPON, a recess was had 4 from 3:06 to 3:18 p.m.) 5 THE VIDEOGRAPHER: We are back on the record 6 at 3:18 p.m. 7 SPECIAL MASTER COHEN: Just to explain how 8 this is going to happen going forward. I've ruled 9 that Plaintiff is allowed, instead of seven hours, 10 eight hours of deposition time. He can split up 11 that deposition time any way he chooses. 12 In other words, this -- today's 13 deposition will be recessed. It will resume with 14 the remaining time. And that is in order to allow 15 Plaintiffs' counsel to review the documents he was 16 just given, and the parties will work together to 17 find a time when that resumed deposition will take 18 place, preferably after the Defendants' document 19 production and responses to Interrogatories are 20 complete. 21 And because it's a relatively short 22 period of time, the hope is that that perhaps can 23 be piggybacked with another deposition here in 24 Chicago.</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. That's not the question I asked you. 2 The question that I asked you was: If 3 Walgreens identifies an order as suspicious, it 4 needs to report it to the DEA when discovered, 5 correct? 6 MR. BENSINGER: Objection; vague. You can 7 answer. 8 BY THE WITNESS: 9 A. If it's a confirmed suspicious order, I 10 would believe the answer is yes. 11 BY MR. MOUGEY: 12 Q. And if Walgreens is not reporting 13 suspicious orders to the DEA as they are 14 discovered, it is not fulfilling its obligations as 15 a distributor, correct, sir? 16 MR. BENSINGER: Objection. That calls for a 17 legal conclusion and violates the Special Master's 18 order on scope. 19 SPECIAL MASTER COHEN: Sustained. 20 BY MR. MOUGEY: 21 Q. You understand that Walgreens has 22 obligations as a distributor, correct? 23 A. Yes. 24 Q. And where does -- and Walgreens</p>
<p style="text-align: right;">Page 239</p> <p>1 Everybody understand? 2 MR. MOUGEY: Yes, sir. 3 SPECIAL MASTER COHEN: Okay. 4 BY MR. MOUGEY: 5 Q. Mr. Bratton, if an order is identified 6 as suspicious, it would need to be reported to the 7 DEA, correct? 8 MR. BENSINGER: Objection; calls for a legal 9 conclusion. 10 BY THE WITNESS: 11 A. If it was confirmed to be suspicious -- 12 I'm sorry. At which time frame are you? 13 BY MR. MOUGEY: 14 Q. Does it matter? If Walgreens identifies 15 an order as suspicious, it's required to report it 16 to the DEA, correct? 17 MR. BENSINGER: Objection; calls for legal 18 conclusion. You may answer. 19 BY THE WITNESS: 20 A. If we were previously reporting orders 21 that we thought may be suspicious prior to 22 December -- November of '12, after that point we 23 would report confirmed orders. 24 BY MR. MOUGEY:</p>	<p style="text-align: right;">Page 241</p> <p>1 understands that those responsibilities are defined 2 in places like the Controlled Substance Act, 3 correct? 4 A. Correct. 5 Q. And that Walgreens' obligations are 6 further refined under the Code of Federal 7 Regulations that are promulgated under the 8 Controlled Substance Act, correct? 9 A. Correct. 10 Q. And in order to or for Walgreens to 11 fulfill its obligations as a distributor, Walgreens 12 needs to understand what its roles and 13 responsibilities are, correct, sir? 14 A. Correct. 15 Q. And, sir, Walgreens understands that in 16 order to fulfill its obligations as a distributor, 17 one of its jobs is to report suspicious orders to 18 the DEA, correct, sir? 19 A. Correct. 20 Q. And if it doesn't report suspicious 21 orders to the DEA, it has not fulfilled its 22 obligation as a distributor, correct? 23 MR. BENSINGER: Same objection. 24 MR. MOUGEY: I have danced and tried to make</p>

<p style="text-align: right;">Page 242</p> <p>1 them as happy as --</p> <p>2 SPECIAL MASTER COHEN: Sustained.</p> <p>3 MR. MOUGEY: I did not mention -- Special</p> <p>4 Master Cohen, I haven't mentioned the CSA. I</p> <p>5 haven't mentioned the regs. I'm asking what his</p> <p>6 understanding of what the industry standards are.</p> <p>7 I didn't even mention the code. I didn't mention</p> <p>8 his interpretation.</p> <p>9 SPECIAL MASTER COHEN: You need to move on.</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. How does Walgreens understand what its</p> <p>12 roles and responsibilities are as a distributor?</p> <p>13 Where does it go to figure that out?</p> <p>14 MR. BENSINGER: Objection; vague. You can</p> <p>15 answer.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Communications with other members in the</p> <p>18 industry, communications that we receive from the</p> <p>19 DEA either through inspections, letters,</p> <p>20 conferences that we attend, e-mails, communication.</p> <p>21 Conglomerate of a multitude of sources.</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. All right. So, that's a good example,</p> <p>24 letters, communications with the DEA helps</p>	<p style="text-align: right;">Page 244</p> <p>1 the less formal relationships with other</p> <p>2 distributors?</p> <p>3 MR. BENSINGER: Objection; calls --</p> <p>4 BY THE WITNESS:</p> <p>5 A. It can --</p> <p>6 MR. BENSINGER: Objection; calls for</p> <p>7 speculation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I think it can help us try to clarify</p> <p>10 what the requirements are.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. The relationships and the communications</p> <p>13 with other distributors?</p> <p>14 A. Or other pharmacies, et cetera.</p> <p>15 Q. Help -- the relationships with other</p> <p>16 pharmacies and other distributors help clarify what</p> <p>17 Walgreens' responsibilities are as a distributor.</p> <p>18 Is that your testimony, sir?</p> <p>19 A. Yes.</p> <p>20 Q. Sir, the memo that we just left, Bratton</p> <p>21 22. I'm going to hand you what I'm going to mark</p> <p>22 as Bratton 30(b)(6) 23.</p> <p>23 (WHEREUPON, a certain document was</p> <p>24 marked as Bratton 30(b)(6) Exhibit</p>
<p style="text-align: right;">Page 243</p> <p>1 Walgreens understand its roles and responsibilities</p> <p>2 as a distributor, correct, sir?</p> <p>3 A. That's one of the ways that we can seek</p> <p>4 to understand.</p> <p>5 Q. And you mentioned organizations.</p> <p>6 Industry organizations, correct?</p> <p>7 A. Correct.</p> <p>8 Q. What industry organizations are you</p> <p>9 referring to?</p> <p>10 A. So, there have been times at NACDS,</p> <p>11 which is the National Association of Chain Drug --</p> <p>12 National Association of Chain Drug Stores, there</p> <p>13 have been times when the DEA has presented at those</p> <p>14 trade organizations -- meetings.</p> <p>15 Q. What other trade organizations that</p> <p>16 Walgreens belonged to that it believes helps</p> <p>17 identify what its roles and responsibilities are as</p> <p>18 a distributor?</p> <p>19 A. Additionally, we participate with the</p> <p>20 National Association of Boards of Pharmacies, and</p> <p>21 then we have less formal relationships with other</p> <p>22 companies within the industry where we might share</p> <p>23 information.</p> <p>24 Q. And that helps set industry standards,</p>	<p style="text-align: right;">Page 245</p> <p>1 No. 23: 10/01/09 Project Request</p> <p>2 Estimate; WAGMDL00492070 -</p> <p>3 00492072.)</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. 23 is a little more than a year later</p> <p>6 than the memo drafted by Wayne Bancroft on June 23,</p> <p>7 2008, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And in the memo on 23 there is an update</p> <p>10 on the different phases of the suspicious order</p> <p>11 algorithm, correct, sir?</p> <p>12 A. Correct.</p> <p>13 Q. And under "Description" in this update</p> <p>14 on the algorithm, "Create a process to</p> <p>15 systematically identify and prevent suspicious</p> <p>16 orders for C-II and PSE drug items." Correct?</p> <p>17 A. Yes, that's what's on the page.</p> <p>18 Q. So, as of October of 2009, a year after</p> <p>19 the first memo, the algorithm was still designed to</p> <p>20 identify and prevent suspicious orders, correct?</p> <p>21 A. Correct. However, it was in testing and</p> <p>22 this neither specifies probable or confirmed</p> <p>23 suspicious orders.</p> <p>24 Q. And this doesn't make any distinction in</p>

<p style="text-align: right;">Page 246</p> <p>1 this October 1, 2009 memorandum between probable or 2 potential suspicious orders. It just simply says 3 an order that is flagged as a result of the 4 algorithm is suspicious, correct, sir? 5 MR. BENSINGER: Object to the characterization. 6 BY THE WITNESS: 7 A. It says here, "Any orders that are 8 deemed suspicious will be flagged as suspicious and 9 populated in a file to be sent to LP and Rx 10 Services for review and analysis." 11 BY MR. MOUGEY: 12 Q. Do you agree that that is an accurate 13 statement about what the algorithm was designed to 14 do? 15 A. That it would flag them as suspicious? 16 Again, I think there is a distinction here as 17 potentially or confirmed suspicious. And, again, 18 this was during the testing period. But yes. 19 Q. Let's go through it sentence by 20 sentence. The second sentence says, "An order 21 quantity will be deemed suspicious based on a 22 formula." Correct, sir? 23 A. It does say. 24 Q. Is that an accurate statement that an</p>	<p style="text-align: right;">Page 248</p> <p>1 this document, a programmer analyst, is in a 2 position to delineate the entire corporate policy 3 of Walgreens, no. 4 Q. So, the simple answer is, in addition to 5 Mr. Bancroft, Mr. Khanna is wrong too, correct? 6 A. Correct. 7 Q. Yes, sir. So, this is the second 8 document that is incorrect that an order flagged by 9 the system is suspicious, correct, sir? 10 A. Probable suspicious would be a correct 11 characterization. I don't -- again, I think there 12 is a distinction between confirmed and probable 13 that is not discussed in this document. 14 Q. Yes, sir. But the question I asked was: 15 This is the second document in a row that we've 16 looked at that you believe is incorrect that 17 designates an order flagged by the algorithm as 18 suspicious, correct, sir? Yes or no. 19 A. Neither of these documents I think make 20 any distinction between possible and confirmed 21 suspicious orders. 22 Q. So, the simple answer to my question is 23 yes, that is the second document in a row that 24 we've looked at that have incorrectly stated that</p>
<p style="text-align: right;">Page 247</p> <p>1 order quantity will be deemed suspicious based on a 2 formula used to determine inconsistent ordering 3 patterns? 4 A. That's what's on the page. 5 Q. Is that accurate? Does Walgreens 6 believe that statement is accurate, that an order 7 that was flagged as a result of the algorithm will 8 be deemed suspicious based on that formula? 9 A. I believe that our position is that it 10 is a probable, not confirmed suspicious order. 11 Q. Can you point me to anywhere -- well, 12 let's just keep going. 13 The next sentence, "Any orders that are 14 deemed suspicious will be flagged as suspicious." 15 Correct? 16 A. Correct. 17 Q. And the orders that are deemed 18 suspicious are orders that were flagged as a result 19 of the formula, correct? 20 A. Correct. 21 Q. So, you believe that's an inaccurate 22 statement of the policies as implemented by 23 Walgreens, correct, sir? 24 A. I don't think that Rakesh, the author of</p>	<p style="text-align: right;">Page 249</p> <p>1 an order flagged by the system is deemed 2 suspicious, correct? 3 A. They have failed to make a distinction 4 between probable and confirmed. Both documents. 5 Q. So, they are incorrect? 6 A. They are incomplete. 7 Q. So, sir, let me hand you what I'm going 8 to mark as Bratton 24, which is dated 2/8/2012. 9 (WHEREUPON, a certain document was 10 marked as Bratton 30(b)(6) Exhibit 11 No. 24: 2/8/12 e-mail with 12 attachment; WAGMDL00325129 - 13 00325130.) 14 BY MR. MOUGEY: 15 Q. You see, sir, that this isn't from one 16 of the algorithm or one of the tech folks. This is 17 from Barbara Martin, correct? 18 A. Correct. 19 Q. Ms. Martin that you've been citing all 20 day long about interview process, correct? 21 A. Correct. 22 Q. And this is dated 2/8 of 2012. Do you 23 see that? 24 A. Correct.</p>

<p style="text-align: right;">Page 250</p> <p>1 Q. Almost three and a half years after the 2 first memo we looked at with Wayne Bancroft, 3 correct, sir? 4 A. Correct. 5 Q. And Ms. Martin, the subject, and 6 attaches a document entitled "Suspicious Order 7 Monitoring Process," correct? 8 A. Correct. 9 Q. And she sent this to Denman Murray. And 10 who is Denman Murray? 11 A. Her boss. 12 Q. You don't think she'd send her boss 13 something that was incorrect or inaccurate, right? 14 A. I don't know. 15 Q. I mean, you wouldn't expect Ms. Martin 16 is -- "Suspicious Order Monitoring Process," 17 page 2. Do you see the title? 18 A. I do. 19 Q. "Current Process." Fourth bullet down. 20 "Original project design was to prevent the DCs 21 from filling any potential suspicious order." 22 Do you see that? 23 A. I do. 24 Q. "And to capture the data to identify</p>	<p style="text-align: right;">Page 252</p> <p>1 was that if we reduced the order, it was not 2 suspicious. 3 Q. That's not what I asked. I said if the 4 orders were deemed suspicious that were flagged by 5 the algorithm, they were required to be reported to 6 the DEA, correct, sir? 7 MR. BENSINGER: Objection; calls for a legal 8 conclusion and a violation of the Walmart ruling by 9 Special Master Cohen on interpretation. 10 SPECIAL MASTER COHEN: I'll allow it as asked. 11 BY THE WITNESS: 12 A. I'm not sure that it was clear to us if 13 it was or it was not suspicious. Again, we were 14 reaching out to the DEA and asking for clarity, 15 trying to discuss with field agents and receiving a 16 variety of responses. 17 So, our reporting stance at that time 18 was orders that are possibly suspicious are 19 reported in the Appendix E-3 report and these were 20 not. 21 BY MR. MOUGEY: 22 Q. But that's not what I asked. 23 What I asked you, sir, was: If the 24 orders were deemed suspicious that were flagged</p>
<p style="text-align: right;">Page 251</p> <p>1 stores with potentially suspicious activity for 2 loss prevention team to investigate." Correct? 3 A. Correct. 4 Q. And underneath the "Enhancements," "The 5 system will identify stores that had order quantity 6 decreased and then placed order to vendor." 7 Correct? 8 A. Correct. 9 Q. So, between 2009 and 2012, when did 10 Walgreens decide that orders flagged from the 11 algorithm were no longer suspicious because they 12 had been cut? 13 A. I don't know. 14 Q. You don't know? 15 A. I don't know. 16 Q. Because if they were deemed suspicious, 17 orders that were flagged from the algorithm, they 18 were required to be reported to the DEA, correct, 19 sir? 20 MR. BENSINGER: Objection; argument and calls 21 for a legal conclusion, scope. 22 BY MR. MOUGEY: 23 Q. Do you need me to redo the question? 24 A. I believe that our position at that time</p>	<p style="text-align: right;">Page 253</p> <p>1 from the algorithm, they were required to be 2 reported to the DEA, correct, sir? 3 MR. BENSINGER: Asked and answered and same 4 objection. 5 BY THE WITNESS: 6 A. I would -- my belief, I think what our 7 position is was that if they were confirmed 8 suspicious after an investigation, they should be 9 reported. 10 BY MR. MOUGEY: 11 Q. But that's a little different than the 12 question I asked. Okay. If you think the answer 13 is no, that's okay. 14 But what I asked was: If the orders 15 were deemed suspicious that were flagged from the 16 algorithm, they were required to be reported to the 17 DEA, correct? 18 MR. BENSINGER: I continue to object on the 19 ground Mr. Mougey is seeking to elicit an 20 interpretation of regulations and a legal 21 conclusion, not fact testimony about Walgreens' 22 practices. And so I object. 23 BY MR. MOUGEY: 24 Q. It's the same question I've asked four</p>

<p style="text-align: right;">Page 254</p> <p>1 or five times in a row.</p> <p>2 A. No, I don't believe they were required</p> <p>3 to be reported.</p> <p>4 Q. All right. We've now gone through phase</p> <p>5 1 through 3.</p> <p>6 A. 4.</p> <p>7 Q. I'm sorry. Phase 1 through 4. Thank</p> <p>8 you.</p> <p>9 What time frame was 4 initiated?</p> <p>10 A. 4 was deployed August '12. So, two,</p> <p>11 three months after the previous version. And then</p> <p>12 5, it was in effect through November '12 when</p> <p>13 version 5 came online.</p> <p>14 Q. And what was the difference with phase 4</p> <p>15 from phase 3?</p> <p>16 A. It incorporated vendor orders and</p> <p>17 partial fills to make them eligible for flagging or</p> <p>18 reduction.</p> <p>19 So, my understanding is 3 considered</p> <p>20 vendor orders in its calculation, 4 would flag or</p> <p>21 reduce vendor orders as well as our own DC orders.</p> <p>22 Q. I'm a little confused. Help me with</p> <p>23 what vendors.</p> <p>24 So, up until June of 2012 with this</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. I didn't ask what that vendor did at</p> <p>2 their distribution center. We'll get into that</p> <p>3 later.</p> <p>4 What I'm asking you right now is</p> <p>5 Walgreens had absolutely zero policy and procedure</p> <p>6 in place in writing to detect pharmacies that --</p> <p>7 whose orders were being reduced by the algorithm at</p> <p>8 Walgreens and then ordering from another vendor up</p> <p>9 to June of 2012, correct, sir?</p> <p>10 A. I -- no, I don't agree with that, and</p> <p>11 the reason -- the basis that I give for that is I</p> <p>12 believe that Barb and Marcy were seeing this type</p> <p>13 of activity, which is why we sought to include</p> <p>14 vendor orders in the system.</p> <p>15 Q. What makes you believe that Barb and</p> <p>16 Marcy -- Barb and Marcy must have been really busy.</p> <p>17 Barb and Marcy are everywhere, aren't they?</p> <p>18 MR. BENSINGER: Objection; argumentative.</p> <p>19 BY MR. MOUGEY:</p> <p>20 Q. They are. Barb and Marcy are filling a</p> <p>21 tremendous amount of roles in the suspicious</p> <p>22 ordering monitoring policies, aren't they?</p> <p>23 A. They are heavily involved with</p> <p>24 inventory --</p>
<p style="text-align: right;">Page 255</p> <p>1 whole algorithm, let's just say I come in with</p> <p>2 1,000 orders, it's flagged and reduced to 500, and</p> <p>3 I'm the pharmacist and I want to get that</p> <p>4 Schedule II or Schedule III.</p> <p>5 Can I just -- up until June of '12, can</p> <p>6 I just pick up and order from another vendor</p> <p>7 outside of Walgreens?</p> <p>8 A. It's possible. I know at some point we</p> <p>9 requested that our vendor no longer accept phone</p> <p>10 orders though I haven't been able to definitively</p> <p>11 establish when that occurred.</p> <p>12 Q. Let's do it another way.</p> <p>13 Does Walgreens' system detect that when</p> <p>14 an order has been flagged as a result of the</p> <p>15 algorithm and reduced, up until June of '12, can a</p> <p>16 pharmacist then order from another vendor?</p> <p>17 A. Yes.</p> <p>18 Q. And there was no monitoring of that</p> <p>19 pharmacist ordering from another vendor once their</p> <p>20 order had been reduced by Walgreens?</p> <p>21 A. I believe that Barb and Marcy were</p> <p>22 looking at reports related to that. I can't</p> <p>23 comment on what monitoring the vendor did at their</p> <p>24 distribution center.</p>	<p style="text-align: right;">Page 257</p> <p>1 Q. Two people?</p> <p>2 A. -- and suspicious order monitoring.</p> <p>3 Q. Yes, sir. Two people at the -- at that</p> <p>4 level are filling multiple roles in an operation</p> <p>5 that has anywhere, depending on the time frame, 5,</p> <p>6 6, 7,000, stores, correct?</p> <p>7 A. Correct.</p> <p>8 Q. 200,000 people and it's Barb and Marcy,</p> <p>9 right, in a lot of the answers today, correct?</p> <p>10 MR. BENSINGER: Objection.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. So, what was the system in place at</p> <p>13 Walgreens when it cut an order as a result of its</p> <p>14 algorithm and reduced it to monitor a pharmacist</p> <p>15 from going to another vendor like a Cardinal or</p> <p>16 AmeriSource or Anda and ordering from that vendor?</p> <p>17 A. I believe that it was -- they would</p> <p>18 monitor those as part of the audits, the</p> <p>19 retrospective audits.</p> <p>20 Q. "I believe" sounds to me like a guess.</p> <p>21 What policy and procedure is in place</p> <p>22 that would oversee a pharmacist whose order was cut</p> <p>23 and flagged by the algorithm from ordering from</p> <p>24 another vendor up until June of 2012?</p>

<p style="text-align: right;">Page 258</p> <p>1 A. Only the retrospective review that would 2 have been performed by loss prevention and 3 inventory. 4 Q. And retrospective review, how often is 5 that? 6 A. They told me that this was occurring 7 monthly. 8 Q. What I asked was what -- not what they 9 told you, not what somebody said. I want to know 10 what written policies and procedures were in place 11 at Walgreens to detect when a pharmacist whose 12 order had been rejected and cut down as part of the 13 algorithm and then placed the order at another 14 vendor like a Cardinal, Anda or AmerisourceBergen, 15 and the answer is there were none, correct, sir? 16 A. I believe there were no written 17 documents, no. 18 Q. Thank you. You are familiar with the 19 term "interstoring"? 20 A. Correct. 21 Q. Interstoring is when one Walgreens 22 pharmacy would go to another Walgreens pharmacy to 23 help fill an order, correct? 24 A. Transfer product between two stores.</p>	<p style="text-align: right;">Page 260</p> <p>1 reduced? 2 Not what somebody told you. Where is 3 the written policy and procedure? 4 A. I don't believe there is one for that 5 time period. 6 Q. Sir, isn't it also true that another 7 exception from phase 1 through June of 2012 was 8 that Rx Services would have the ability to remove 9 items from the order limitation process or even to 10 remove an entire store from the order limit program 11 for a limited amount of time? 12 MR. BENSINGER: Objection; compound. 13 BY THE WITNESS: 14 A. The -- I understand that they had the 15 ability to, based on their judgment and evaluation 16 of the store or the item, exempt it from this 17 process, yes. 18 Q. Let me make sure that we -- it's not 19 compound so it's not confusing. 20 Rx Services had the ability to remove 21 items from the order limitation that was being 22 monitored by Walgreens, correct? 23 A. From the reduction, yes. 24 Q. Yes, sir. And Rx Services also had the</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. That was another loophole in Walgreens' 2 system when an order had been reduced, not filled, 3 that a store could go to another store and 4 interstore, correct? 5 MR. BENSINGER: Objection; argumentative. 6 BY THE WITNESS: 7 A. There is a possibility that they could 8 interstore product. 9 BY MR. MOUGEY: 10 Q. And what written system was in place at 11 Walgreens to detect and monitor interstoring for 12 Schedule II and III controlled substances up until 13 June of 2012? 14 A. Other than the retrospective review, I 15 don't believe there was a process to prevent them 16 from interstoring at that time. 17 Q. And I understand that's what people have 18 told you about the retrospective review, but the 19 question I asked you was a little different. 20 What written policies and procedures 21 were in place to monitor for interstoring, one 22 Walgreens goes to another Walgreens and gets 23 Schedule II or Schedule III opiates, after its 24 order had been flagged by the algorithm and</p>	<p style="text-align: right;">Page 261</p> <p>1 ability to remove from the reduction an entire 2 store? 3 A. Correct, based on their evaluation of 4 that store. 5 Q. What other loopholes other than the 6 ability to remove a store, the ability to remove 7 items, interstore, and the ability of a pharmacist 8 to order from another distributor, what other 9 loopholes are you aware of? 10 MR. BENSINGER: Objection; argument. 11 BY THE WITNESS: 12 A. I believe that there is legitimate 13 reasons why stores might be removed from the 14 reduction or certain items based on a variety of 15 factors. However, I'm not aware of any additional 16 reasons that an order might not go through, so 17 I'm... 18 Q. Isn't it possible that the button on the 19 computer interface could be turned off? 20 A. By whom? 21 MR. BENSINGER: Objection; vague. 22 BY MR. MOUGEY: 23 Q. By -- isn't it possible that a store was 24 turned off from the DEA internal review on the</p>

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1 algorithm? It's possible a store could just be
2 turned off from the system, correct?
3 A. My understanding would be that that's
4 possible based on exceptional circumstances.
5 Q. Like and those exceptional circumstances
6 are like weather?
7 A. No. That that store has a different
8 book of business that warrants more -- more of that
9 type of product, that it's either being removed
10 from or the item is being removed from.
11 Q. Sir, where are the written policies and
12 procedures that delineate when a store can be
13 removed because of its book of business?
14 A. I don't believe there is a written
15 policy.
16 Q. I'm going to come back to some of those
17 exceptions in a minute. If I could direct your
18 attention to P-WAG-18 and 19.
19 Mr. Bratton, I'm going to hand you what
20 I'm going to mark as Exhibit 25.
21 (WHEREUPON, a certain document was
22 marked as Bratton 30(b)(6) Exhibit
23 No. 25: July 2011, DEA Statistics;
24 WAGMDL00492171.)

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1 BY MR. MOUGEY:
2 Q. July 11. Do you see that?
3 A. I do.
4 Q. "DEA Statistics," correct?
5 A. Correct.
6 Q. "How many orders are flagged each
7 month?"
8 According to this synopsis, in the month
9 of July, 20,699 items are marked suspicious,
10 correct?
11 A. It says that there, yes.
12 Q. And the next bullet, "For the orders
13 flagged, how many orders violated 1, 2 or all 3
14 flags?"
15 Do you see that?
16 A. I see that.
17 Q. And below are tolerance violation,
18 inventory violation and frequency violation,
19 correct?
20 A. Correct.
21 Q. So, this isn't the E-3 Chemical
22 Handler's Manual, correct?
23 A. Correct.
24 Q. This is the algorithm from Wayne, right?

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1 A. Correct.
2 Q. That this is referencing. The
3 memorandum is referencing the algorithm all the way
4 back to the memo we saw in 2008. This is a
5 variation several steps down the road in July of
6 2011, correct?
7 MR. BENSINGER: Objection; foundation.
8 BY THE WITNESS:
9 A. It appears to be in 2011.
10 BY MR. MOUGEY:
11 Q. There is no other system in place at
12 this point in time other than the E-3 Chemical
13 Handler's, this and then the query that you
14 mentioned earlier, correct?
15 A. Not that I'm aware of, no.
16 Q. Yes, sir. So, according to this memo,
17 20,699 items are marked suspicious, right?
18 A. That's what it says, yes.
19 Q. Yes, sir. And those would be orders
20 that have been reduced and then filled, correct?
21 MR. BENSINGER: Objection; mischaracterization.
22 BY THE WITNESS:
23 A. I believe at this time they would be
24 reduced and filled.

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1 BY MR. MOUGEY:
2 Q. But it was not, even though they are
3 being referred to as suspicious internally, these
4 orders were not reported to the DEA, correct, sir?
5 A. Correct. I think frequently internally
6 there is a conflation of probable suspicious and
7 confirmed suspicious.
8 Q. I hand you what we're going to mark as
9 Bratton 30(b)(6) 24 -- 26. I'm sorry.
10 (WHEREUPON, a certain document was
11 marked as Bratton 30(b)(6) Exhibit
12 No. 26: DEA Statistics;
13 WAGMDL00492169.)
14 BY MR. MOUGEY:
15 Q. Similar memo from August of 2011,
16 correct, sir?
17 A. It says it was for data in that month,
18 yes.
19 Q. Yes, sir. Which is the next month from
20 Bratton 23 we just looked at, correct?
21 A. Correct.
22 Q. Total of 40,176 items are marked
23 suspicious, correct?
24 A. That's what it says there.

<p style="text-align: right;">Page 266</p> <p>1 Q. And, again, we see below, tolerance 2 violation, inventory adjustments and frequency 3 violations, correct? 4 A. Correct. 5 Q. That is very similar to the algorithm 6 drafted by Mr. Bancroft back in 2008, correct? 7 A. Correct. 8 Q. And similar to the last month, the 9 orders that are flagged and then reduced internally 10 are being referred to as suspicious, correct, sir? 11 A. That's how they refer to them here, yes. 12 Q. And if you look all the way at the 13 bottom of that page, do you see the 102,116? 14 A. Correct. 15 Q. So, there had been 102,000 orders at the 16 time of this August '11 e-mail that had been cut 17 and reduced but not reported to the DEA because 18 they were not suspicious, correct, sir? 19 MR. BENSINGER: Objection; mischaracterization. 20 BY THE WITNESS: 21 A. It appears that there had been 102,000 22 that had been cut and reduced up until this time. 23 BY MR. MOUGEY: 24 Q. Yes, sir. There had been 102,000 orders</p>	<p style="text-align: right;">Page 268</p> <p>1 retrospectively? 2 A. A portion. They looked at a sample. 3 Q. Yes, sir. Another potential weakness in 4 Walgreens' system is the overrides, correct, sir? 5 A. I'm not sure what you mean by that. 6 Q. Do you know what Walgreens referred to 7 as overrides? 8 A. At what time? 9 Q. Up until 2012. 10 A. So, my understanding is that stores or 11 pharmacy supervisors could request an override 12 based on circumstances at the store. That's my 13 understanding. 14 Q. So, we have gone through interstoring. 15 We've gone through calling another vendor. We've 16 gone through a store being removed from the system. 17 The pharmacist can also call and ask for 18 an override, correct? 19 A. Correct. However, that has to be 20 approved by field leadership and the -- at one time 21 the inventory team and at a later date the 22 Rx Integrity team. 23 Q. And just in Cleveland and Cuyahoga, from 24 2006 to 2013, early '14, when Walgreens stopped</p>
<p style="text-align: right;">Page 267</p> <p>1 up and to this time in August of 2011 that had been 2 flagged, cut, reduced and, according to the 3 practices of Walgreens, not reported to the DEA as 4 suspicious, correct, sir? 5 A. Correct. 6 Q. And, sir, by looking at this memo, do 7 you have any understanding of how far back in time 8 the 102,000 went? 9 A. I would -- not based only on this memo, 10 no. 11 Q. Where was Walgreens recording the number 12 of orders that had been flagged, reduced and not 13 shipped? 14 A. Based on conversations with Steve 15 Bamberg and others in the IT apparatus, I believe 16 that there is reporting that existed on a server 17 called ADR 4 or ADR 7. I'm not sure which one. 18 And I know that Barb would pull data from that to 19 review. So, I think that that's where that 20 information was kept. 21 Q. So, Barb and -- sorry. Marcy? 22 A. Yes. 23 Q. Barb and Marcy are the ones responsible 24 for those 102,000 orders, looking at those</p>	<p style="text-align: right;">Page 269</p> <p>1 distributing, do you have any idea how many times 2 the stores in those two counties called and asked 3 and were approved for overrides? 4 A. I do not know the number. 5 Q. Have you seen documents that evidence 6 the number of overrides? 7 A. I don't. I don't recall. 8 Q. Does Walgreens have policies and 9 procedures in place in writing about what the 10 criteria for those overrides are? 11 A. For certain, in 2013. Prior to that, 12 there may be. One moment. 13 There are documents that describe the 14 process of requesting an override, but I don't know 15 that we have it in the 2012 time period documents 16 that describe how inventory would make the 17 determination to override or not to override other 18 than in collaboration with the pharmacy supervisor. 19 Q. Or what the criteria is for that 20 override, whether it's approved or not approved in 21 kind of a Walgreens policies and procedures on when 22 to approve an override and when not to approve an 23 override, correct? 24 A. Correct.</p>

<p style="text-align: right;">Page 270</p> <p>1 Q. And the section that you're referring to</p> <p>2 is simply a how do you go about filling out the</p> <p>3 right section on the Walgreens intranet to request</p> <p>4 the override, right?</p> <p>5 A. Correct.</p> <p>6 Q. More of an automation process, not</p> <p>7 necessarily the policies and procedures on when it</p> <p>8 is appropriate, right?</p> <p>9 A. Correct.</p> <p>10 MR. MOUGEY: I think this is a good time for a</p> <p>11 break if it's all right with everybody else.</p> <p>12 THE VIDEOGRAPHER: We are off the record at</p> <p>13 3:56 p.m.</p> <p>14 (WHEREUPON, a recess was had</p> <p>15 from 3:56 to 4:17 p.m.)</p> <p>16 THE VIDEOGRAPHER: We are back on the record</p> <p>17 at 4:17 p.m.</p> <p>18 BY MR. MOUGEY:</p> <p>19 Q. Mr. Bratton, I'd like to finish up this</p> <p>20 chart to make sure I got everything here.</p> <p>21 Phase 4, I have August '12, and I</p> <p>22 apologize because I think you already told me, but</p> <p>23 how long did phase 4 -- August '12 to when?</p> <p>24 A. November '12.</p>	<p style="text-align: right;">Page 272</p> <p>1 sometime in 11/12?</p> <p>2 A. November '12, yeah.</p> <p>3 Q. November '12, okay. Tell me what was</p> <p>4 different in phase 5 from phase 4.</p> <p>5 A. The biggest -- well, there is a couple</p> <p>6 differences.</p> <p>7 First is that the frequency calculation</p> <p>8 was replaced instead with a ceiling calculation,</p> <p>9 and what that ceiling does is it considers the</p> <p>10 amount of orders and the quantity of those orders</p> <p>11 over a period of time as opposed to just how often</p> <p>12 an order was placed irregardless of its size.</p> <p>13 Q. Okay. Anything else?</p> <p>14 A. So, I believe at this point the system</p> <p>15 would flag orders and reduce them to zero, and that</p> <p>16 at that point the store -- we removed the frequency</p> <p>17 threshold because it was superseded by ceiling.</p> <p>18 Q. Flag and replace to zero. Explain to</p> <p>19 that?</p> <p>20 A. So, whereas previously the orders were</p> <p>21 cut to the quantity that the system -- so,</p> <p>22 previously if you had a limit of 5 and you tried to</p> <p>23 order 10, it would reduce it to 5.</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. Till November. Okay.</p> <p>2 And your understanding is that the</p> <p>3 change in the criteria on phase 4 was that vendor</p> <p>4 orders and partial fills were now under the DEA</p> <p>5 requirement umbrella or were monitored, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Tell me what the partial fill portion is</p> <p>8 because I'm not -- I don't recall that.</p> <p>9 A. When a prescription in the front end is</p> <p>10 marked as a partial fill or out of stock, it</p> <p>11 reduces the -- the system thinks that the pharmacy</p> <p>12 is out. They may not actually be. That may not</p> <p>13 even be the store's intention. They may just not</p> <p>14 have enough to fill the complete quantity. And</p> <p>15 that could trigger a replenishment order. And, so,</p> <p>16 I think that they were ensuring that it wasn't</p> <p>17 unduly weighing partial fills in the algorithm.</p> <p>18 Q. Okay. Any other changes in phase 4?</p> <p>19 A. No.</p> <p>20 Q. All right. We just briefly discussed</p> <p>21 interstoring. When was interstoring -- when did</p> <p>22 that become prohibited?</p> <p>23 A. I believe in phase 5.</p> <p>24 Q. Okay. And phase 5 begins then in --</p>	<p style="text-align: right;">Page 273</p> <p>1 A. Now it is reducing an order that exceeds</p> <p>2 the ceiling or tolerance to zero.</p> <p>3 Q. All right. Anything else?</p> <p>4 A. I believe around this time we began the</p> <p>5 process. So, we reduced their order to zero and</p> <p>6 then if they want to get additional product, they</p> <p>7 would have to --</p> <p>8 Q. Reorder?</p> <p>9 A. -- do an override request. If they just</p> <p>10 reordered, it would be cut to zero again.</p> <p>11 Q. Okay.</p> <p>12 A. So, that wouldn't help them really.</p> <p>13 They'd have to do an override request. And also I</p> <p>14 believe around the time this rolled out we began</p> <p>15 investigating those flagged orders, even if they</p> <p>16 were reduced to zero.</p> <p>17 Q. Okay. And, so, "Investigating orders</p> <p>18 that triggered algorithm." How does that sound?</p> <p>19 Order triggered by algorithm, by the algorithm, is</p> <p>20 that right?</p> <p>21 A. Correct.</p> <p>22 Q. And when you say "investigated," you</p> <p>23 mean due diligence?</p> <p>24 A. Correct.</p>

<p style="text-align: right;">Page 274</p> <p>1 Q. Were they then reported to the DEA?</p> <p>2 A. If they were confirmed suspicious, they</p> <p>3 would be reported to the DEA. Initially I believe</p> <p>4 by fax and then later by electronic fax to the</p> <p>5 field office that's relevant to the store's</p> <p>6 registration.</p> <p>7 Q. All right. Let me just go through what</p> <p>8 I just wrote down.</p> <p>9 "11/12." And I'm assuming phase 5</p> <p>10 lasted until Walgreens was no longer a distributor?</p> <p>11 A. There was a phase 6, but it had to do</p> <p>12 with improvements primarily to the -- in some</p> <p>13 documents they call it phase 6, but in other</p> <p>14 documents they call it phase 2 of the dashboard.</p> <p>15 Q. Right.</p> <p>16 A. And, so, it was primarily with how the</p> <p>17 Rx Integrity or inventory before that would view</p> <p>18 this information that the system was generating. I</p> <p>19 don't believe it impacted the functioning of the</p> <p>20 algorithm, though.</p> <p>21 Q. It was more of an interface issue?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So, bear with me.</p> <p>24 11/12 till when, phase 5?</p>	<p style="text-align: right;">Page 276</p> <p>1 at 4:27 p.m.</p> <p>2 BY MR. MOUGEY:</p> <p>3 Q. All right. Mr. Bratton, you were in the</p> <p>4 middle of explaining to us that you still use the</p> <p>5 system today, but you're no longer a distributor.</p> <p>6 We don't report the orders and you were -- can you</p> <p>7 finish what you were explaining to us about the</p> <p>8 system and as it's in place until today?</p> <p>9 A. So, I just wanted to make the</p> <p>10 distinction that we continue to operate this</p> <p>11 system. However, as we're no longer a distributor,</p> <p>12 we don't report flagged orders to the DEA.</p> <p>13 Q. All right. So, the system in large part</p> <p>14 that you're using today as a -- in the dispensing</p> <p>15 capacity is almost identical to the system you were</p> <p>16 using as a distributor?</p> <p>17 A. Well, we still use it to evaluate orders</p> <p>18 before they're transmitted to ABC. It still</p> <p>19 relates to orders, not necessarily dispensing.</p> <p>20 But, yes. As a non-distributor.</p> <p>21 Q. Let's do it this way, then.</p> <p>22 So, the system that Walgreens is using</p> <p>23 today, the phase 1 through 5, the steps that you</p> <p>24 explained to us, are still being used today by</p>
<p style="text-align: right;">Page 275</p> <p>1 A. Till we ceased to be a distributor.</p> <p>2 Q. Pretty much till the end of the --</p> <p>3 till --</p> <p>4 A. 2014.</p> <p>5 Q. I'm going to just put "When Walgreens</p> <p>6 out of distribution business." Is that fair?</p> <p>7 A. For controlled substances, yes.</p> <p>8 Q. Yes. Thank you.</p> <p>9 A. So, we continue to use the system today,</p> <p>10 but as we are no longer a distributor, we don't</p> <p>11 report the orders, but we still have the system in</p> <p>12 place for --</p> <p>13 (WHEREUPON, there was a short</p> <p>14 interruption.)</p> <p>15 MR. MOUGEY: I hate to do this. It's Cohen.</p> <p>16 MR. BENSINGER: Should we go off the record</p> <p>17 for the housekeeping?</p> <p>18 MR. MOUGEY: Hey, David.</p> <p>19 THE VIDEOGRAPHER: Off the record at 4:23. Do</p> <p>20 you want it on?</p> <p>21 MR. MOUGEY: It's okay.</p> <p>22 (WHEREUPON, a recess was had</p> <p>23 from 4:23 to 4:27 p.m.)</p> <p>24 THE VIDEOGRAPHER: We are back on the record</p>	<p style="text-align: right;">Page 277</p> <p>1 Walgreens to fulfill its role even as a dispenser</p> <p>2 or a pharmacy, correct?</p> <p>3 A. I think that we have continued --</p> <p>4 MR. BENSINGER: Objection to form. Could I</p> <p>5 have that -- give me just a moment to look at this</p> <p>6 question, please.</p> <p>7 Objection to form based on the scope of</p> <p>8 the question.</p> <p>9 Do you have it in mind?</p> <p>10 THE WITNESS: What's that?</p> <p>11 MR. BENSINGER: Do you have the question in</p> <p>12 mind?</p> <p>13 THE WITNESS: No, I need it again.</p> <p>14 MR. BENSINGER: I objected to scope. You can</p> <p>15 answer.</p> <p>16 BY MR. MOUGEY:</p> <p>17 Q. So, the question I asked was that the</p> <p>18 system that Walgreens is using today as you</p> <p>19 described, phase 1 through 5, the steps that you</p> <p>20 explained to us, those are still being used today</p> <p>21 by Walgreens to fulfill its role even as a</p> <p>22 dispenser or a pharmacy, correct?</p> <p>23 A. I think that we continue to use it today</p> <p>24 out of an abundance of caution and as a good</p>

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1 practice. I don't know that it's specifically
2 related to any responsibility as a dispenser.
3 Q. Okay. If it's not as a pharmacy or
4 dispenser, what other capacity would Walgreens be
5 using this system to discharge its duties on
6 controlled substances?
7 A. As I said, I think we continue to use it
8 out of an abundance of caution. Also, I -- from my
9 personal knowledge, my understanding is that it is
10 for our Know Your Customer program of our
11 distributor, they like that we have something in
12 place to screen our orders.
13 Q. Do any of the vendors that Walgreens
14 uses -- forget it. Let me just go back.
15 Talk about averages for a second and
16 Wayne Bancroft's, essentially the metrics used in
17 the algorithm as it changes over time. Okay?
18 A. Um-hmm.
19 Q. To some extent, the algorithm relies on
20 averages of stores of similar size, correct?
21 A. As of --
22 MR. BENSINGER: Objection; vague.
23 BY THE WITNESS:
24 A. As of phase 5, it does a linear

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1 regression and compares stores to stores of similar
2 volume.
3 BY MR. MOUGEY:
4 Q. Okay. And when we say "of similar
5 volume," that's measured as the number of
6 prescriptions, correct?
7 A. Total prescription sales for all
8 products.
9 Q. And as a result, stores are categorized
10 based on the number of total prescription sales for
11 all products, right?
12 A. Correct.
13 Q. And one of the measurements is the
14 percentages of a controlled substance as a
15 percentage of overall prescriptions for all
16 products, right?
17 A. I don't believe so. I believe it's the
18 proportion of that, each item compared to total
19 sales on an item-by-item basis, not a -- not at the
20 whole top level comparison.
21 Q. What impact would -- I'll tell you what.
22 There are some charts in your production with
23 the -- with a linear regression model graph,
24 correct?

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1 A. Correct.
2 Q. And I believe I've already passed -- I
3 will make it a little easier. Bear with me. Let
4 me find that.
5 One of those examples would be in the
6 controlled substance ordering that we have marked
7 as 8, would it not?
8 A. Of the -- of the linear regression?
9 Q. Yes.
10 A. This looks like a linear regression. I
11 don't know if this is real data or, you know, made
12 up. But this is what it would look like typically,
13 what's on slide or I have Bates No. 7941.
14 Q. And you're on Bates No. 7941?
15 A. 667941. But in the exhibit that you
16 provided.
17 Q. Yes. Let's look at Exhibit 8. It's a
18 different Bates number. The Bates number I'm
19 looking at is 395925. Do you see it?
20 A. Yes.
21 Q. It's on "Phase 5 Functionality - Ceiling
22 Calculation." Correct?
23 A. Correct. Same one I was looking at in
24 the other Bates number.

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1 Q. Okay. And part of your preparation
2 today was to understand the metrics that were used
3 as elaborated in (i) under the subject matters for
4 testimony, correct?
5 A. Correct.
6 Q. Now, you see on Bates No. 25, under
7 "Phase 5 Functionality - Ceiling Calculation."
8 Explain to us what ceiling calculation is.
9 A. So, ceiling calculation would look at,
10 for each individual item, what is the average
11 volume within a linear regression for each item
12 over initially a six-week period though later I
13 believe that was changed to 26 weeks.
14 So, if, for instance, the average store
15 that sells 200 scripts a day orders 5,000 dosage
16 units of that item, that would be the average.
17 And then there is some math that
18 determines average and standard deviations above
19 the average, and that would be the ceiling after
20 which the store would need to -- the order would be
21 flagged and reduced to zero if it was placed by the
22 staff.
23 And if they needed to go above that for
24 some reason, they would have to submit an override

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1 form, at which time we'd have to evaluate the need
2 on a case-by-case basis.
3 Q. So, what impact, if any, would increases
4 in volume for controlled substances distributed by
5 Walgreens have year to year on the line
6 demonstrating the ceiling on Bates No. 925?
7 A. It's --
8 MR. BENSINGER: Objection; beyond the scope.
9 You can answer.
10 BY THE WITNESS:
11 A. If it impacted their total prescription
12 volume, which it may or may not, then it would
13 be -- move them into a bucket to be compared with a
14 store of that size, though it's in 50 script per
15 day increments, so you would have to -- it's --
16 you'd have to make it all the way into the next
17 bucket to change who you are being compared to.
18 BY MR. MOUGEY:
19 Q. Okay. So, let's now just assume we are
20 in the same bucket. Okay. Let's go through this.
21 And the line is titled "Ceiling for
22 Oxy 30." Correct?
23 A. That's on the slide, yes.
24 Q. Yes. And the -- all those dots are

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1 stores in the chain dosage unit for Oxy 30s based
2 on the same time frame. It's comparing store to
3 store, right?
4 A. Again, I don't know if this was test or
5 real data or just representative. But it appears
6 that they're saying these are the store volumes for
7 a store of that sales volume of prescriptions.
8 Q. Right. So, all those dots based on that
9 metric would be individual stores' sales volume of
10 Oxy 30s, correct?
11 A. Correct.
12 Q. Now, the question I asked was: If the
13 average dosage unit for Oxy 30s within that bucket
14 of comparable stores increased from one year to the
15 next, what impact, if any, would that have on the
16 ceiling for Oxy 30s?
17 A. It's difficult to assess because you may
18 be filling the same number of prescriptions but
19 with more dosage units per script, given a certain
20 type of population in that area.
21 It would be difficult for any one item
22 because any single item composes just a few percent
23 of the store's volume at most, like 3 to 4% for the
24 biggest mover.

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1 And, so, even if you doubled on any one
2 item, which would be really difficult in this
3 system, but let's say for a moment you could, you'd
4 still only move your total script volume by 2 or
5 3%, which I don't think would be enough to get you
6 into the next bucket.
7 Q. Okay. I think that's where you and I
8 aren't communicating. I apologize if my question
9 is awkward, but what I'm asking, though, isn't
10 going from one bucket to another.
11 What I'm asking is, is if there was an
12 increase bucket-wide, stores of a similar size, in
13 their Oxy 30 prescriptions without a corresponding
14 increase in overall prescriptions, that line
15 representing the ceiling would move upwards,
16 correct?
17 A. If all stores had an increase in this
18 item, then the average for that item, the
19 chain-wide average would go up, yes.
20 Q. Yes, sir. And it doesn't necessarily
21 require all stores. It requires enough stores to
22 move the average up, correct, enough of an increase
23 in Oxy 30 prescription that would increase the
24 average and therefore move the line for the ceiling

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1 further up the X -- the X and Y axis, correct?
2 A. I think that's theoretically possible,
3 but I don't know that I am educated to comment on
4 how much or how significant it would be. But I am
5 following what you're saying and I think that is
6 possible.
7 Q. Do you recall anyone from in your
8 preparation analyzing the impact of increasing
9 dispensing of controlled substances, what impact
10 that would have on the ceiling for Schedule II and
11 III year to year?
12 A. Since the time that I have been
13 involved, in February of '13, as a result of this
14 system, you know, all the green dots in this chart
15 are being cut off until they fall below this line.
16 We've generally seen almost all items
17 declining, initially to great complaint by stores
18 and in some cases patients and boards of
19 pharmacies. And so I don't think that was
20 happening. I don't recall if we specifically
21 analyzed that exact thing, though.
22 Q. And I'm not asking you in your personal
23 capacity when you began at Pharmaceutical
24 Integrity.

<p style="text-align: right;">Page 286</p> <p>1 But did you see in preparation for today</p> <p>2 and understanding the metrics any analysis of what</p> <p>3 increases in prescriptions for Schedule II and</p> <p>4 Schedule III opiates would have on the ceiling in</p> <p>5 this algorithm?</p> <p>6 A. I have not.</p> <p>7 Q. What I want to do on this chart so we</p> <p>8 can capture this work that we have done today</p> <p>9 trying to --</p> <p>10 MR. MOUGEY: What number are we on, Alex?</p> <p>11 I'm going to mark this chart, and we can</p> <p>12 make copies of it, as Bratton 26. Okay. 27. I'm</p> <p>13 sorry.</p> <p>14 (WHEREUPON, a certain document was</p> <p>15 marked as Bratton 30(b)(6) Exhibit</p> <p>16 No. 27: Handwritten chart prepared</p> <p>17 by Mr. Mougey during deposition.)</p> <p>18 BY MR. MOUGEY:</p> <p>19 Q. And I have been reading these out as we</p> <p>20 were going along. Are you comfortable with the</p> <p>21 language that I have included on here or would you</p> <p>22 like to go through this and make sure that we are</p> <p>23 on the same page and I have accurately captured</p> <p>24 what you've been testifying to on this chart over</p>	<p style="text-align: right;">Page 288</p> <p>1 think is right. Is my math right?</p> <p>2 MR. BENSINGER: 2 hours and 9 minutes in order</p> <p>3 to attain a full eight hours as permitted by</p> <p>4 Special Master Cohen.</p> <p>5 MR. MOUGEY: Sounds good.</p> <p>6 MR. BENSINGER: So, we will adjourn for today,</p> <p>7 Mr. Mougey?</p> <p>8 MR. MOUGEY: Wonderful. Thank you.</p> <p>9 THE VIDEOGRAPHER: We are off the record at</p> <p>10 4:44 p.m.</p> <p>11 (Time Noted: 4:44 p.m.)</p> <p>12 FURTHER DEPONENT SAITH NAUGHT.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 287</p> <p>1 the last few hours?</p> <p>2 A. If I may take a look at it.</p> <p>3 Q. Sure. If you want me to read it out</p> <p>4 loud and go through it up on the screen, I'd be</p> <p>5 happy to do that too.</p> <p>6 A. The only question I have is I can't read</p> <p>7 this on phase 3, "Further" something.</p> <p>8 Q. On phase 3. "Further refinement."</p> <p>9 A. Okay. Yes.</p> <p>10 Q. "Further refinement changes," and I</p> <p>11 cited Bates No. 325172 with a dash "Final." Does</p> <p>12 that --</p> <p>13 A. Yes.</p> <p>14 Q. Other than that, are you comfortable</p> <p>15 what I have on here captures, and fairly</p> <p>16 accurately, what we have gone through over the last</p> <p>17 few hours?</p> <p>18 A. I believe so.</p> <p>19 MR. MOUGEY: All right. Why don't we -- this</p> <p>20 is a good stopping point. Tell us where we are and</p> <p>21 we can all agree how much time I have left.</p> <p>22 THE VIDEOGRAPHER: 5 hours and 51 minutes on</p> <p>23 the record currently.</p> <p>24 MR. MOUGEY: So, 2 hours and 9 minutes left I</p>	<p style="text-align: right;">Page 289</p> <p>1</p> <p>2 I, CORINNE T. MARUT, C.S.R. No. 84-1968,</p> <p>3 Registered Professional Reporter and Certified</p> <p>4 Shorthand Reporter, do hereby certify:</p> <p>5 That previous to the commencement of the</p> <p>6 examination of the witness, the witness was duly</p> <p>7 sworn to testify the whole truth concerning the</p> <p>8 matters herein;</p> <p>9 That the foregoing deposition transcript</p> <p>10 was reported stenographically by me, was thereafter</p> <p>11 reduced to typewriting under my personal direction</p> <p>12 and constitutes a true record of the testimony</p> <p>13 given and the proceedings had;</p> <p>14 That the said deposition was taken</p> <p>15 before me at the time and place specified;</p> <p>16 That the reading and signing by the</p> <p>17 witness of the deposition transcript was agreed</p> <p>18 upon as stated herein;</p> <p>19 That I am not a relative or employee or</p> <p>20 attorney or counsel, nor a relative or employee of</p> <p>21 such attorney or counsel for any of the parties</p> <p>22 hereto, nor interested directly or indirectly in</p> <p>23 the outcome of this action.</p> <p>24</p> <p>14 CORINNE T. MARUT, Certified Reporter</p> <p>15</p> <p>16 (The foregoing certification of this</p> <p>17 transcript does not apply to any</p> <p>18 reproduction of the same by any means, unless under</p> <p>19 the direct control and/or supervision of the</p> <p>20 certifying reporter.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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E R R A T A
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PAGE LINE CHANGE

REASON:	_____
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ACKNOWLEDGMENT OF DEPONENT

I, EDWARD BRATTON, do hereby certify under oath that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

EDWARD BRATTON DATE

Subscribed and sworn to before me this _____ day of _____, 20____.

My commission expires: _____

Notary Public

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LAWYER'S NOTES

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